(24,665)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 106.

FURNESS, WITHY & COMPANY, LIMITED, PETITIONER,

vs.

YANG-TSZE INSURANCE ASSOCIATION, LIMITED, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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a RETURN TO CERTIORARI.

United States Circuit Court of Appeals for the Second Circuit.

YANG-TSZE INSURANCE ASSOCIATION, LIMITED, et al., Libellants-Appellees,
against
FURNESS, WITHY & COMPANY, LIMITED, Respondent-Appellant,

And 14 Other Cases.

Transcript of Record.

Appeal from the United States District Court for the Southern District of New York.

1 United States District Court, Southern District of New York.

YANG-TSZE INSURANCE ASSOCIATION, LIMITED, et al., Libellant,
against
FURNESS, WITHY & COMPANY, LIMITED, Respondent,

And 14 Other Cases Against Same Respondent.

Statement.

1912.
Feb. 27. Yang-tsze, &-., libel filed.
July 1. Order amending libel filed.
July 2. Nord-deutsche, &c., libel filed.
Aug. 13. Order amending libel filed.
Oct. 8. Answer to Yang-tsze libel filed.
Oct. 8. Answer of Nord-deutsche, &c., libel filed.
Oct. 11. Despard, Coleman, Weidensaul, Van Praag, Orr, Moore and Bertschmann libels filed.
Oct. 30. Boston, &c., libel filed.
Nov. 15. Answers to Coleman, Weidensaul, Van Praag, Moore and Bertschmann libels filed.
2
Nov. 19. Answers to Despard and Orr libels filed.
Nov. 20. Answer to Boston, &c., libel filed.
Dec. 3. Federal, &c., libel filed.
1913.
Jan. 8. Answer to Federal, &c., libel filed.
Jan. 8. United States libel filed.
Jan. 9. Answer to U. S. libel filed.
Jan. 13. Case tried before Hand, J.

Mch. 26. Opinion, Hand, J., filed.
Apl. 23. Oloffsan, Silvera and Hazan & Co., libels filed.
June 4. Order of substitution.
June 13. Final decree for libellants entered.
June 18. Notice of appeal filed.
Oct. 2. Assignments of error filed.

3 To the Judges of the United States District Court for the Southern District of New York:

The libel of the Yang-tsze Insurance Association, Limited, and Herbert Appleton and Douglas F. Cox, attorneys-in-fact for the subscribers at the United States Lloyds, and the Indemnity Mutual Marine Assurance Co., Ltd., against Furness, Withy & Company, Limited, and Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft, in a cause of collision, civil and maritime, alleges as follows:

First. At all the times hereinafter mentioned the libellant, Yangtsze Insurance Association, Limited, was and it is a corporation organized under the laws of the Colony of Hong Kong, and is engaged in the business of Marine Insurance, with an office for the transaction of business at No. 3 South William Street, in the Borough of Manhattan, City of New York.

Second. At all the times hereinafter mentioned Herbert Appleton and Douglas F. Cox were and they are attorneys-in-fact for one hundred individual marine underwriters, as subscribers at United States Lloyds, and are authorized in their behalf to prosecute this suit. The United States Lloyds has an office for the transaction of business at No. 3 South William Street, in the Borough of Manhattan, City of New York.

Third. At the times hereinafter mentioned, the Indemnity Mutual Marine Assurance Company, Ltd., was and it is a corporation organized under the laws of Great Britain and Ireland and it is engaged in the business of marine insurance with an office in New York.

4 Third-*a*. At all the times hereinafter mentioned, the respondent, Furness, Withy & Company, Limited, was and it is a foreign corporation organized under the laws of the Kingdom of Great Britain and Ireland, and was and is the sole owner of the British steamship Pomaron. Said respondent has property, credits and effects within this district.

Fourth. At all the times hereinafter mentioned, the respondent, Hamburg-Amerikanische Packetfahrt Actien-Gesellcschaft, commonly called the Hamburg-American Line, was and it is a corporation organized under the laws of the Empire of Germany, and was sole owner of the German steamship Alleghany. Said respondent has property, credits and effects within this district.

Fifth. On or about January 31, 1912, Huttlinger & Struller, at New York, shipped in good order and condition on board the steamship Alleghany, bound from New York to ports in Haiti and other ports in the West Indies and South America, the following mentioned merchandise:

5 packages and 1 case of various articles marked Mme. L. G.

(H & S) Jeremie consigned to Mandame L. Gaveau at Jeremie, of
C. M.
the value of $98.68; 1 case marked (H & S) consigned to Clement
Pau P.
Magloire, at Port au Prince, of the value of $29.01; 29 packages of
A B L
various merchandise marked (H & S) consigned to A. Labissier,
Aux Cayes
5 at Aux Cayes, of the value of $323.58; 7 packages of mer-
R. D. Co.
chandise of various kinds, marked L R consigned to Roberts,
(H & S)
Aux Cayes
Dutton & Co. at Aux Cayes, of the value of $137.64; 91
D S
ESTOR
packages of merchandse of various kinds marked (H & S)
Petit Coave
consigned to D. Siclait at Petit Coave, of the value of $732.22;
D S
F F
45 packages of merchandise of various kinds, marked (H & S)
Petit Coave
consigned to D. Siclait at Petiti Coave, of the value of
$409.81; 774 packages of merchandise of various kinds, marked
F. H. & Co.
E A H
(H & S) consigned to F. Hermann & Co. at Port au Prince, of the
P. au P.
value of $5,408.89; 62 packages of merchandise of various kinds,
F. H. & Co.
J T
marked (H & S) consigned to F. Hermann & Co. at Port au Prince,
P. au P.
of the value of $854.86; 14 packages of merchandise of various kinds,

		S T	S P
	E. Blanchard	T M L	V C M
marked respectively,	(H & S)	(H & S)	(H & S)
	Pt. au P.	Pt. au P.	P. au P.

6 consigned to d Ennery Dejois at Port au Prince, of the value
of $168.26; 4 packages of merchandise of various kinds,
B N R H
marked (H & S) consigned to the Banque Nationale de la Republic
P. au P.
d'Haiti, at Port au Prince, of the value of $109.21; 31 packages of
L. P. & Co.
merchandise of various kinds, marked (H & S) consigned to L.
P. au P.
Pelout & Co., at Port au Prince, of the value of $298.78; 8 packages

L V L
of merchandise of various kinds, marked (H & S) consigned to
P. au P.
L. V. Longendonck, at Port au Prince, of the value of $188.87; 2
Consul de France
E R
packages of merchandise of various kinds, marked (H & S) con-
Pt. au P.
signed to Monsieur Saroye, Consul of France, at Port au Prince, of the value of $45.85.

On or about February 1, 1912, the Central Railroad of Haiti shipped on board the Alleghany at New York 1 package of samples of the value of $93.98, and 49 packages of different kinds of merchandise of various marks, of the value of $241.11. Freight thereon amounting to $28.64 was prepaid.

The aggregate value of all the aforesaid merchandise was $9,140.73.

The Hamburg-American Line duly issued its bills of lading for the aforesaid several parcels of merchandise, reciting the shipment thereof on board the steamer, and agreeing to transport and deliver the same to the several consignees at the several ports of des-
7 tination above set forth. The freight on the said shipments was paid in advance at New York, amounting to $1,097.69.

Sixth. On or about January 5, 1912, at Liverpool, Cohen & Co. shipped on board the steamship Laurentic, bound for New York, 20 packages of various kinds of merchandise, marked respectively L. NYH M L S A D F consigned to Emil L. Boaz, General Manager
Inagua
Hamburg-American Line, at New York, for transshipment to Inagua, Bahama Islands. Said merchandise was of the value of $631.33. A through bill of lading was duly issued for this merchandise by the agents of the Hamburg-American Line, in London, and the merchandise therein mentioned was duly transshipped at New York on board the steamship Alleghany on or about January 31st, 1912. Freight on said shipment, amounting to $37.44 was prepaid.

Seventh. Cohen & Company, at New York, also shipped on the steamship Alleghany certain other cargo for the port of Inagua, as follows:

The L. & N. Y. H.
20 packages of merchandise of various kinds, marked Inagua consigned to W. W. Richardson, of the value of $122.13; 16 packages
J. E. S.
of merchandise of various kinds, marked Inagua, consigned to James E. Seymour, of the value of $118.32; 20 packages of mer-
M. L. S.
chandise of various kinds, marked Inagua, consigned to
8 Maybell Symmonett, of the value of $96.48; 9 packages of
A. D. F.
merchandise of various kinds, marked Inagua, consigned to

A. D. Farquharsen, of the value of $61.08; 4 packages of mer-
S. T.
chandise of various kinds, marked Inagua, consigned to Maybell Symmonett, of the value of $31.73; 2 packages of merchandise of
S.
various kinds, marked Inagua, consigned to Maybell Symmonett,
G. H. R.
of the value of $10.16; 1 case of merchandise, marked Inagua, consigned to George H. Russell, of the value of $6.55; 2 barrels of
A. W. I.
merchandise, marked Inagua, consigned to A. W. Graham, of the value of $13.62.

The aggregate value of the consignments shipped by Cohen & Co., as aforesaid, amounts to $460.07.

The Hamburg-American Line duly issued its bills of lading for the aforesaid several parcels of merchandise, reciting the shipment thereof, on board the steamer, and agreeing to transport and deliver the said several shipments at Inagua to the consignees therein mentioned, as above set forth Freight on the said cargo was prepaid in New York, amounting to $39.77.

Seventh. (*a*) Huttlinger & Struller, on behalf of France, Gonzales & Co., of Barranquilla, Colombia, S. A., at New York, shipped on board the Alleghany, on or about January 31, 1912, 250 pack-
Franzales
ages of merchandise of various kinds, marked Barranquilla, consigned to France, Gonzales & Co. at Savanilla, of the value of $2,139.05.

9 The Hamburg-American Line duly issued its bill of lading for the aforesaid merchandise, reciting the shipment thereof on board the steamer, and agreeing to transport and deliver the same to the port and consignees above stated. Freight in the sum of $116.09 was prepaid.

Eighth. On January 30, 1912, the Kny-Scheerer Company, at New York, shipped on board the Alleghany 1 case of merchandise
K
N NY P
marked 55086 consigned to H. Berg & Co., at Puerto Colombia,
Bogota
via Barranquilla
of the value of $100.

The Hamburg-American Line duly issued its bill of lading therefor, reciting the shipment thereof on board the steamer, and agreeing to transport and deliver the same to the port and consignees above stated. Freight in the sum of $6.37 was prepaid.

Ninth. On or about January 31, 1912, N. C. D. Borden, shipped on board the Alleghany 40 bales of cotton domestics, numbered 174-202 inclusive, 109-118 inclusive, and 355, to be delivered at the port of Cartagena, on the order of the owners. Said shipment was of the value of $4,698.

On or about January 31, 1912, the Carter Ink & Mucilage Com-

pany shipped on board the Alleghany 10 packages of ink and mucilage to be delivered at the Port of Barrancabermeja via Cartagena on the order of the owners. Said shipment was of the value of $35.

The Hamburg-American Line duly issued its bills of lading for the aforesaid merchandise shipped by M. C. D. Borden and by the Carter Ink & Mucilage Company, reciting the shipment thereof, on board the steamer, and agreeing to transport and deliver the same to the port and consignees above stated. Freight on said shipments amounting to $86.34 was prepaid.

Tenth. On or about January 31st, 1912, The Vacuum Oil Company, shipped on board the steamship Alleghany at New York, 10 barrels of lubricating oil of the value of $210 for delivery at Port au Prince on the order of the owner.

On or about January 31st, 1912, Achille Starace shipped on board the Alleghany at New York, three cases of merchandise of various kinds, marked $\frac{A\ S}{G\ M}$ $\frac{}{P\ au\ P}$ of the value of $399.02 for delivery to order at Port au Prince.

On or about January 31st, 1912, Achille Starace shipped on board the steamship Alleghany at New York, 2 cases containing merchandise of various kinds, marked $\frac{A\ S}{P\ R}$ $\frac{}{P\ au\ P}$ of the value of $438.39 for delivery to order at Port au Prince.

On or about January 31st, 1912, Achille Starace shipped on board the steamship Alleghany at New York, three packages of merchandise of various kinds, marked $\frac{A\ S}{G\ C}$ $\frac{}{P\ au\ P}$ of the value of $525.84 for delivery to order at Port au Prince.

On or about January 31st, 1912, Achille Starace shipped on board the Alleghany, at New York, by parcels post in the United States mail, one parcel containing merchandise of various kinds, of the value of $13.09 addressed to A. De Matteis & Co., Port au Prince.

For the different shipments of merchandise referred to in this tenth paragraph of the libel, except the parcels post package, the Hamburg-American Line duly issued its bills of lading reciting the shipment of the cargo mentioned on board the steamer and agreeing to transport and deliver the same at the port and to the consignees above stated. The freight on all the shipments was prepaid as follows: On the shipments of the Vaccum Oil Company, $30.52; on the shipments of Achille Starace, $21.71.

Eleventh. On February 2, 1912, shortly after 11 o'clock A. M. while the Alleghany was bound on the voyage to the ports aforesaid, she came into collision with the steamship Pomaron at a point about 90 miles east of Cape Henry, the Alleghany sustaining such injuries that she afterwards sank, causing a total loss of all her

cargo. The libellants have no means of knowing precisely the circumstances of the collision, but they are informed and allege that shortly prior to the collision the Alleghany was standing on a course of approximately south, and the Pomaron was standing on a course approximately east. The wind was high, the sea rough, and both vessels were proceeding at full speed through falling snow, without sounding signals as required by Article 16 of the International Rules. The vessels were on crossing courses, and the Alleghany had the Pomaron on her own starboard hand. Nevertheless, after learning of the presence and approach of the Pomaron, the Alleghany starboarded her helm in an effort to cross the course
12 of the Pomaron, and neglected to stop and reverse in due season. The Pomaron, after learning of the presence and approach of the Alleghany on her port hand, at first gave a single short blast on her whistle, without making a corresponding change of helm, and afterwards, when the vessels were closer together, improperly changed her course and speed so as to bring about a collision with the starboard side of the Alleghany, at about a right angle. Neither vessel sounded reversing signals, or other appropriate signals to indicate their intended manœuvres when the risk of collision arose.

The loss of the cargo describel in the libel was not caused nor contributed to by any fault on the part of the libellant, but was caused or contributed to by faults on the part of said steamers as follows:

a. On the part of the Pomaron:

1. In that a good lookout was not maintained.

2. In that the steamer was proceeding at an immoderate rate of speed in falling snow, without sounding the whistle signals required by law.

3. In that, after sighting or learning of the approach of the Alleghany on her own port hand, she sounded a single short blast on her whistle, without making a corresponding change of course, and subsequently, when the vessels were close together, she made a change of course and speed that caused her to swing into the starboard side of the Alleghany, without indicating her manœuvres by appropriate whistle signals.

4. In that she failed to hold her course and speed.

5. In that, in consequence of thick weather or other cause, she found herself so close to the Alleghany that collision could not be avoided by the action of that vessel alone, yet failed to take
13 such action as would have best aided to avert collision, by reversing her engines seasonably, and by swinging away from instead of toward the position of the Alleghany.

6. In other respects to be shown at the trial.

b. On the part of the Alleghany:

1. In that a good lookout was not maintained.

2. In that the steamer was proceeding at an immoderate rate of speed, in falling snow, without sounding the whistle signals required by law.

3. In that she failed to keep out of the way of the Pomaron after sighting the latter vessel.

4. In that, after sighting, or otherwise learning of the approach of the Pomaron on her own starboard hand, so as to involve risk of collision, she starboarded her helm in an effort to cross ahead of the other vessel, and failed to stop and reverse seasonably.

5. In that she failed to sound whistle signals, indicating her manoeuvre immediately before the collision, in seasonable time, and altogether omitted the reversing signal.

6. In other respects to be shown at the trial.

Twelfth. The various shipments referred to in detail in paragraph Fifth hereof, aggregating in value the sum of $9,140.73, together with the prepaid freight thereon amounting to $1,097.69, were fully insured by the owners thereof under marine policies issued by the libellant, Yang-tsze Insurance Association, Limited, against marine perils during the said voyage of the Alleghany. Under said contracts of insurance, the libellant, Yang-tsze Insurance Association, Limited, became liable for the losses sustained by the owners of said cargo, in consequence of the loss of the Alle-
14 ghany, as aforesaid, and have paid, or become liable to pay for the benefit of the respective owners of the said shipments, the amounts necessary to indemnify them for their damages sustained by reason of the collision; namely, the amounts of the values of the said several shipments as set forth in paragraph Fifth hereof, amounting in the aggregate to $9,140.73, together with the prepaid freight thereon amounting to $1,097.69, and have succeeded by right of subrogation and assignment to the rights of the owners of said shipments respectively to sue for and recover the same herein.

Thirteenth. The various shipments referred to in detail in paragraphs Sixth to Ninth hereof, inclusive, aggregating in value the sum of $8,063.45, together with the prepaid freight thereon, amounting to $286.01, were fully insured by the owners thereof, under marine policies issued by the libellant United States Lloyds, against marine perils during the said voyage of the Alleghany. Under said contract of insurance, the libellant, United States Lloyds, became liable for the losses sustained by the owners of said cargo, in consequence of the loss of the Alleghany, as aforesaid, and have paid, or become liable to pay for the benefit of the respective owners of the said shipments, the amounts necessary to indemnify them for their damages sustained by reason of the collision; namely, the amounts of the values of the said several shipments as set forth in paragraphs Sixth to Ninth hereof, inclusive, amounting in the aggregate to $8,063.45, together with the prepaid freight as aforesaid, and have succeeded by right of subrogation and assignment to the rights of the owners, and the libellants Herbert Appleton and Douglas
15 F. Cox, as attorneys-in-fact for the subscribers of the United States Lloyds, are entitled to sue for and recover the same herein.

Fourteenth. The various shipments referred to in detail in paragraph Tenth hereof, aggregating in value the sum of $1,586.34 together with the prepaid freight thereon, amounting to $52.23, were

fully insured by the owners thereof under marine policies issued by the libellant, The Indemnity Mutual Marine Assurance Company, Limited, against marine perils during the said voyage of the Alleghany. Under said contracts of insurance, the libellant, The Indemnity Mutual Marine Assurance Company, Limited, became liable for losses sustained by the owners of said cargo in consequence of the loss of the Alleghany, as aforesaid, and have paid or become liable to pay, for the benefit of the owners of the respective shipments, the amounts necessary to indemnify them for their damages sustained by reason of the collision, viz., the amounts of the values of the said shipments as set forth in paragraph Tenth hereof, amounting in the aggregate to $1,586.34, together with the aforesaid prepaid freight thereon, $52.23 and have succeeded by right of subrogation and assignment of the rights of the owners of said shipments respectively to sue for and recover the same herein.

Fifteenth. The respondent, Furness, Withy & Company, Limited, is a foreign corporation, and, as libellants are informed and believe, none of its officers or directors reside or is within this district. Said respondent, however, has certain property within the district, the

16 British steamship Richmond, her engines, boilers, tackle, apparel and furniture, of which the respondent, Furness, Withy & Company, Limited, is sole owner.

Sixteenth. All and singular the premises of this libel are true and within the Admiralty and Maritime jurisdiction of this Honorable Court.

Wherefore, the libellants pray that process may issue with clause of foreign attachment against the respondent, Furness, Withy & Company, Limited, citing it to appear and answer in the premises, and further commanding the Marshal of this district, in case the said respondent cannot be found, within the district, to attach its said steamship Richmond, her engines, boilers, tackle, apparel and furniture, and that process may also issue citing the respondent, Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft, to appear and answer the libellants in the premises, and that a decree may be entered against the said respondents, in favor of the libellants, Yang-tsze Insurance Association, Limited, in the sum of $10,219.40, in favor of Herbert Appleton and Douglas F. Cox, attorneys-in-fact for the subscribers at the United States Lloyds, in the sum of $8,349.46, and in favor of the Indemnity Mutual Marine Assurance Company, Limited, in the sum of $1,638.57, making together $20,207.43, with interest thereon and the costs of this action, or that the Court will make such other or different decree as the justice of the cause may require.

CONVERS & KIRLIN,
Proctors for Libellants.

17 SOUTHERN DISTRICT OF NEW YORK,
County of New York, ss:

John C. Eustace, being duly sworn, says:

That the corporation of Willcox, Peck & Hughes is the agent in

New York of the Yang-tsze Insurance Association, Limited, one of the libellants herein; that he is Vice-President of the corporation of Willcox, Peck & Hughes, and that the foregoing libel is true to the best of his knowledge, information and belief.

The sources of his information and the grounds of his belief are derived from reports and claims made to and upon the libellants by the shippers, consignees and owners of the cargo hereinbefore mentioned, or their representatives.

JOHN C. EUSTACE.

Sworn to before me this 27th day of February, 1912.

JOHN L. GAYLEY,
Notary Public, Kings Co., New York County.

[Endorsed:] Libel filed February 27, 1912.

18 At a Stated Term of the United States District Court for the Southern District of New York, Held at the Court Rooms Thereof, in the Post Office Building, Borough of Manhattan, City — New York, on the 27th Day of June, 1912.

Present: Hon. Learned Hand, United States District Judge.

YANG-TSZE INSURANCE ASSOCIATION, LIMITED, and HERBERT Appleton and Douglas F. Cox, Attorneys-in-fact for the Subscribers at the United States Lloyds, and the Indemnity Mutual Marine Assurance Company, Limited, Libellants,

against

FURNESS, WITHY & COMPANY, LIMITED, and HAMBURG-AMERIKANISCHE PACKETFAHRT ACTIEN-GESELLSCHAFT.

Order Amending Libel.

On the underwritten consent and on motion of Convers & Kirlin, proctors for all the libellants in the above-entitled libel, it is hereby

Ordered that the libel heretofore filed herein be and it hereby is amended in the following particulars:

19 First. In Article Tenth of the libel, between the fifth and sixth paragraphs of that article, insert a paragraph in these words:

"On or about January 30, 1912, Achille Starace shipped on board the steamship Alleghany, at New York, one case of leather goods and

A. S.

shoe findings, marked N. M. of the value of $223.84, for delivery

P au P

to order at Port au Prince."

Second. In Article Fourteenth of the libel change the amount, "$1,586.34" so as to read "$1,810.18," wherever the said amount appears in that article.

Third. In the wherefore clause change the amount, $10,219.40"

so as to read "$10,238.42"; change the amount "$1,638.57" so as to read "$1,862.41"; and also change the amount, "$20,207.43," so as to read "$20,450.29."

LEARNED HAND, *D. J.*

We consent to the entry of the foregoing order.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Furness, Withy & Company, Limited.

[Endorsed:] Order amending libel, entered July 1, 1912.

20 To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The answer of Furness, Withy & Company, Limited, to the libel of the Yang-tsze Insurance Association, Limited, Herbert Appleton, Douglas F. Cox and the Indemnity Mutual Marine Assurance Company, Limited, in a cause of collision, civil and maritime, alleges as follows:

First. The respondent admits the first, second, third, third-*a*, and fourth articles of the libel.

Second. The respondent denies any knowledge or information sufficient to form a belief as to the fifth, sixth, seventh, seventh-*a*, eighth, ninth and tenth articles of the libel.

Third. The respondent admits that on February 2, 1912, shortly after 11 o'clock A. M. the Alleghany and the Pomaron were in collision at a point about 100 miles east of Cape Henry, that the Alleghany afterwards sank, that shortly prior to the collision the Alleghany was on a course approximately south and the Pomaron was on a course approximately east; that the vessels were on crossing courses and the Alleghany had the Pomaron on her own starboard hand; that the Pomaron gave a single short blast signal. The respondent denies that the vessels were proceeding through falling snow and further denies each and every allegation of fault on the part of the Pomaron contained in the eleventh article of the libel.

Fourth. The respondent denies any knowledge or information sufficient to form a belief as to the twelfth, thirteenth and fourteenth articles of the libel.

Fifth. The respondent admits the fifteenth article of the libel.

21 Sixth. The respondent admits jurisdiction and denies the other allegation of the sixteenth article of the libel.

Seventh. Further answering, the respondent alleges as follows:

The respondent is a corporation created by and existing under the laws of the United Kingdom of Great Britain and Ireland and is the owner of the British steamship Pomaron, which is a steel screw steamship of 1,809 tons gross, 1,127 tons net, 278 feet long, 40.5 feet beam and 20.5 feet in depth of hold. Until the collision the Pomaron was tight, staunch, strong and in all respects seaworthy.

On February 1, 1912, the Pomaron left Baltimore bound for Leith laden with grain and general cargo. She passed Cape Henry between midnight and 1 A. M. on the 2nd, and set a course E. by N. ¼ N. magnetic, her compass course being E. by N., which course she maintained until just before the collision. The weather was fine and clear and the wind a moderate breeze from the west. The ship was making about nine knots an hour.

About 10.35 A. M. the first officer of the Pomaron, who was in charge of her navigation, sighted on the port bow a steamship, distant about ten miles, which was apparently steering a course about south. The bearing of this vessel, which proved to be the Alleghany, did not change as she approached, but the Pomaron kept her course and speed until she saw that the Alleghany was doing nothing whatever to keep out of the way of the Pomaron. The first officer of the Pomaron, therefore blew one blast of his whistle and at the same time ordered the helm a little to port. Shortly afterwards the Alleghany suddenly blew a signal of two blasts
22 indicating that she was directing her course to port with the intention of crossing the Pomaron's bows. Seeing that a collision was inevitable, the first officer of the Pomaron ordered the engines full speed astern and the helm put hard-a-port in an effort to ease the blow. The Alleghany kept on at full speed across the Pomaron's bows, at the last moment swinging apparently under a starboard helm, and the vessels came together, the Pomaron's stem striking the Alleghany a glancing blow on her starboard side abaft the engine room. The way of the Pomaron was almost checked at the time of the collision, but the Alleghany was swinging rapidly to port and went on at full speed for some distance. The Pomaron stood by to render assistance and took all the crew and passengers on board when it was found that the Alleghany was sinking.

Eighth. By reason of the collision the Pomaron was seriously damaged, her bow and stem being twisted to starboard, her port anchor lost and many of her plates and frames broken.

Ninth. The collision was not caused or contributed to by any negligence on the part of the Pomaron or of those in charge of her, but was due solely to the negligence of the Alleghany in the following respects, among others:

1. In that a good lookout was not maintained.

2. In that there was no officer or any competent person in charge of her navigation for some time prior to the collision.

3. In that although she had the Pomaron on her starboard hand she did not keep out of the way of the Pomaron.

4. In that she made no change of course until too late to avoid a collision.

23 5. In that she starboarded her helm, and attempted to cross the Pomaron's bows.

6. In that she did not port her helm or stop and reverse in time to avoid a collision.

7. In that she did nothing to avoid a collision.

All and singular the premises are true.

Wherefore the respondent prays that the libel herein may be dismissed with costs.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Respondent.

SOUTHERN DISTRICT OF NEW YORK,
County of New York, ss:

Charles C. Burlingham, being duly sworn says: I am a member of the firm of Burlingham, Montgomery & Beecher, proctors for the respondent herein. I have read the foregoing answer and the same is true to the best of my knowledge, information and belief. The sources of my knowledge and information are statements by the master, officers and crew of the Pomaron. The reason why I make this verification is that the respondent is a foreign corporation none of whose officers is within the City of New York.

CHARLES C. BURLINGHAM.

Sworn to before me this 8th day of October, 1912.
[SEAL.] CHAUNCEY I. CLARK,
Notary Public, Kings County.

Certificate filed in New York County.

[Endorsed:] Answer filed October 8, 1912.

24 To the Honorable the Judges of the United States District Court for the Southern District of New York:

The libel of Nord-Deutsche Insurance Company, Union Insurance Society of Canton, Limited, Commercial Union Assurance Company, Limited, The Corporation of Lloyds and Ætna Insurance Company, against Furness, Withy & Company, Limited, and Hamburg-Amerikanische Packefahrt Aktien-Geselschaft, in a cause of collision, civil and maritime, alleges on information and belief as follows:

First. At all the times hereinafter mentioned, the libellant, Nord-Deutsche Insurance Company, was and it still is a corporation organized and existing under the laws of the German Empire, and is engaged in the business of marine insurance, with an office for the transaction of business at 3 South William Street, in the Borough of Manhattan, City of New York.

Second. At all the times hereinafter mentioned, the libellant, Union Insurance Society of Canton, Limited, was and still is a corporation duly organized and existing under the laws of the Colony of Hong Kong, and is engaged in the business of marine insurance, with an office for the transaction of business at 3 South William Street, in the Borough of Manhattan, City of New York.

Third: At all the times hereinafter mentioned, the libellant, Commercial Union Assurance Company, Limited, was and still is a corporation, duly organized and existing under the laws of the

United Kingdom of Great Britain and Ireland, and is engaged in the business of marine insurance, with an office for the transaction of business at 51 Wall Street, Borough of Manhattan, New York City.

25 Fourth. At all the times hereinafter mentioned, The Corporation of Lloyds was and it still is a corporation duly organized and existing under the laws of the United Kingdom of Great Britain and Ireland, and is engaged in the business of marine insurance, with an office for the transaction of business at 66 Beaver Street, in the Borough of Manhattan, City of New York.

Fifth. At all the times hereinafter mentioned, the libellant, Aetna Insurance Company, was and it still is a corporation duly organized and existing under the laws of the State of Connecticut, and is engaged in the business of marine insurance, with an office for the transaction of business at 63 Beaver Street, Borough of Manhattan, City of New York.

Sixth. At all the times hereinafter mentioned, the respondent, Furness, Withy & Company, Limited, was and it still is a foreign corporation, organized under the laws of the United Kingdom of Great Britain and Ireland, and it was and is the sole owner of the British steamship Pomaron. The said respondent has property, credits and effects within this district.

Seventh. At all the times hereinafter mentioned, the respondent, Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft, commonly called the Hamburg-American Line, was and it still is a foreign corporation organized and existing under the laws of the German Empire, and it was the sole owner of the German steamship Alleghany. Said respondent has property, credits and effects within this district.

26 Eighth. On or about February 1, 1912, at New York, Armour & Co. shipped in good order and condition on board the steamship Alleghany, bound from New York, to Port au Prince, the following 51 Packages of merchandise: 5 tierces Mess Pork, 20 bbls. Mess Pork; 2 tierces Whitecloud; 5 tierces Melrose Ex. Family Beef; 10 cases Whitecloud, 5 cases Whitecloud, 1 case Shield Lard, J T
1 case Shield Lard, 2 bbls. Shield Lard, marked "Port au Prince," consigned to the order of Armour & Company at Port au Prince. Freight on the said shipment in the sum of $71.42 was prepaid at New York. The aggregate value of the 51 packages of merchandise aforesaid, including the prepaid freight, was $1,050.

The Hamburg-American Line duly issued its bill of lading for the said 51 packages of merchandise, reciting the shipment thereof on board the steamship Alleghany, and agreeing to transport and deliver the same unto the order of Armour & Co. at Port au Prince.

Ninth. On or about January 10, 1912, at Liverpool, Purgold & Co. shipped on board the steamship Cedric, bound for New York, C V
19 packages of various kinds of merchandise marked P 121, 150/3, Aux Cayes
154, 151, 161/2, 21/30 respectively, consigned to Emil L. Boas,

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General Manager Hamburg-American Line at New York, for transhipment to Aux Cayes, there to be delivered to the order of C. Voigt.

On or about January 10, 1912, at Liverpool, Walter Roughton shipped on board the steamship Cedric, bound for New York, two other packages of various kinds of merchandise D S marked Petit Goave 21 and 49 respectively, consigned to Emil L. Boas, General Manager, Hamburg-American Line, at New York, for transshipment to Petit Goave, there to be delivered to the order of D. Siclait. Freight on the aforesaid 21 packages in the sum of £6:11:11, or, at the exchange rate of $4.8665, $32.10, was prepaid at Liverpool. The value of the aforesaid 21 packages of Merchandise, including the prepaid freight, was £75, which, at the exchange rate of $4.8665, is $364.99.

Through bills of lading were duly issued for this merchandise by the agents of the Hamburg-American Line in Liverpool, and the merchandise therein mentioned was duly transshiped at New York on board the steamship Alleghany on or about January 31, 1912.

Tenth. On or about February 1, 1912, at New York, Daniel Miller Company shipped in good order and condition on board the steamship Alleghany, bound from New York to Port au Prince, two cases O L & C of dry goods marked D M C 193 and 3710 respectively, consigned Port au Prince to Oloffson, Lucas & Co., at Port au Prince. Freight on the said shipment in the sum of $12.36 was prepaid at New York. The value of the said two cases, including the prepaid, was $230.

The Hamburg-American Line duly issued its bill of lading for the aforesaid two cases of dry goods, reciting the shipment thereof on board the steamship Alleghany and agreeing to transport and deliver the same to the consignee therein mentioned at Port au Prince.

28 Eleventh. On or about January 30, 1912, G. Amsinck & Co., at New York, shipped in good order and condition, on board the steamship Alleghany, bound from New York to Puerto M S N Columbia, 10 bales of cotton goods marked Neiva 711/20 respect- Barranquilla ively, consigned to Messrs. Alzamora Palacio & Company, at Puerto Columbia. Freight on the said shipment in the sum of $11.18 was prepaid at New York.

The Hamburg-American Line duly issued its bill of lading for the aforesaid bales of cotton goods, reciting the shipment thereof on board the steamship Alleghany, and agreeing to transport and deliver the same to the consignee therein named, at Puerto Columbia.

On or about January 19, 1912, at Glasgow, Scotland, Roberto Vargas shipped on board the steamship Caledonia, bound for New York, 8 bales of cotton goods, marked [F V & H] 1449/50, 649, Savanilla 588/592 respectively, consigned to Emil L. Boas, General Manager, Hamburg-American Line at New York, for transshipment to Puerto

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Columbia. Freight on the said shipment in the sum of $— was prepaid.

A through bill of lading was duly issued for the said eight bales of cotton goods by the agents of the Hamburg-American Line at Glasgow, and the merchandise therein mentioned was duly transshipped at New York on board the steamship Alleghany on or about January 31, 1912.

The aggregate value of the aforesaid eighteen bales of dry goods and cotton goods was £321, which, at the exchange rate of $4.8665, equals, in American currency, $1,562.15.

29 Twelfth. On or about February 1, 1912, at New York, the Autopiano Company, shipped in good order and condition on board the steamship Alleghany, bound from New York to Savanilla, four cases of pianos marked Aurelio Bermudez, Barranquilla, Columbia, 81,294, 81,832, 81,827 and 81,853 respectively consigned to V. Dugand e Hijo, at Savanilla. The aggregate value of the four cases above mentioned was $1,045.

The Hamburg-American Line duly issued its bill of lading for the aforesaid cases of merchandise, reciting the shipment thereof on board the steamship Alleghany and agreeing to transport and deliver the same to the consignee therein mentioned at Savanilla.

Thirteenth. On or about January 30, 1912, at New York, Lyon & Co. shipped in good order and condition on board the steamship Alleghany, bound for ports in Hayti, the following merchandise: 50 boxes herrings marked A M / L & C / Jeremie and 25 bags of flour marked A M / L & C, / Jeremie consigned to A. Magloire, at Jeremie; 2 drums of codfish, 6/2 drums codfish, 4/4 drums codfish, 40 bbls. of Alewives, 150 boxes of herrings, 6/2 barrels of pork and 5 barrels of pork heads, all marked D & CO / L & C, consigned to Delinois & Co., at Port au Prince; 60 boxes of P. au P. herrings, one case of butter and one case of oleo, all marked L P K / L & C, / Jeremie consigned to L. P. Kerlegand at Jeremie; 100 boxes of her-

30 rings, 137 pieces of boards, 135 pieces of boards and one bale of cottons marked (D G) / L & C, consigned to D. Guillou at Aux Cayes; 2 drums of codfish, 2/2 drums of codfish, 10/4 drums of codfish, 10 barrels of Alewives, 5 barrels of mackerel, 50 boxes herrings, 60 bags flour and 200 cases kerosene oil, marked Aux Cayes / Roux / L & C, / P. au P. consigned to Messrs. Roux & Co., Port au Prince; 4 bales cottons and 4 cases cottons, marked J J / L & C 303, 302, 6710/11, 1/4 respectively, consigned to Joseph Jabon, Miragoane; 2 bales of cottons marked Miragoane

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E D
L & C 6706/7 respectively, consigned to Elias Daumitte, Mira-
Miragoane
goane; 5 drums of codfish, 6/2 drums of codfish, 4/4 drums of cod-
F. Calisti
fish, and 15 barrels of alewives, marked L & C, consigned to F.
Aux Cayes
Calisti, Aux Cayes; 2 bales cottons and one case cottons marked
A G
L & C 6716, 323 and 33 respectively, consigned to Alfred Gogny,
P. au P.
Port au Prince; 30 cases lard, 1 bag nutmegs, 5 bags pepper and 1
A T L
case cottons, marked L & C, consigned to A. T. Lestage, Jeremie;
Jeremie
31 100 bags flour, 18 cases lard, 10/2 cases soap, 3 cases oleo, 10
Gousse
barrels sugar, and 5 barrels beer, marked L & C, consigned to T.
Miragoane
Gousse, Miragoane; 3 bales cotton, 50 bags flour, and 2 bales oakum,
L A R
marked L & C, consigned to L. A. Roumer, Jeremie. Freight on
Jeremie
the aforesaid merchandise, aggregating $760.87, was prepaid at New York. The aggregate value of the aforesaid merchandise, including the prepaid freight was $9,130.

The Hamburg-American Line duly issued its bills of lading for the aforesaid several packages of merchandise, reciting the shipment thereof on board the steamship Alleghany and agreeing to transport and deliver the same to the several consignees at the several ports of destination above set forth.

Fourteenth. On February 2, 1912, shortly after 11 o'clock A. M. while the Alleghany was bound on the voyage to the ports aforesaid, she came into collision with the steamship Pomaron at a point about 90 miles east of Cape Henry, the Alleghany sustaining such injuries that she afterwards sank, causing a total loss of all her cargo. The libellants have no means of knowing precisely the circumstances of the collision, but they are informed and allege that shortly prior to the collision the Alleghany was standing on a course of approximately south, and the Pomaron was standing on a course approximately east. The wind was high, the sea rough, and both vessels were proceeding at full speed through falling snow, without sounding signals as required by Article 16 of the International
32 Rules. The vessels were on crossing courses, and the Alleghany had the Pomaron on her own starboard hand. Nevertheless, after learning of the presence and approach of the Pomaron, the Alleghany starboarded her helm in an effort to cross the course of the Pomaron, and neglected to stop and reverse in due season. The Pomaron, after learning of the presence and approach of the Alleghany on her port hand, at first gave a single short blast of her whistle, without making a corresponding change of helm, and after-

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wards, when the vessels were closer together, improperly changed her course and speed so as to bring about a collision with the starboard side of the Alleghany at about a right angle. Neither vessel sounded reversing signals, or other appropriate signals to indicate their intended manœuvres when the risk of collision arose.

The loss of the cargo described in the libel was not caused nor contributed to by any fault on the part of the libellants, but was caused or contributed to by faults on the part of said steamers as follows:

a. On the part of the Pomaron:

1. In that a good lookout was not maintained.

2. In that the steamer was proceeding at an immoderate rate of speed in falling snow, without sounding the whistle signals required by law.

3. In that, after sighting or learning of the approach of the Alleghany on her own port hand, she sounded a single short blast on her whistle, without making a corresponding change of course, and subsequently, when the vessels were close together, she made a change of course and speed that caused her to swing into the
33 starboard side of the Alleghany, without indicating her manœuvres by appropriate whistle signals.

4. In that she failed to hold her course and speed.

5. In that, in consequence of thick weather or other cause, she found herself so close to the Alleghany that collision could not be avoided by the action of that vessel alone, yet failed to take such action as would have best aided to avert collision, by reversing her engines seasonably, and by swinging away from instead of toward the position of the Alleghany.

6. In other respects to be shown at the trial.

b. On the part of the Alleghany:

1. In that a good lookout was not maintained.

2. In that the steamer was proceeding at an immoderate rate of speed, in falling snow, without sounding the whistle signals required by law.

3. In that she failed to keep out of the way of the Pomaron after sighting the latter vessel.

4. In that, after sighting, or otherwise learning of the approach of the Pomaron on her own starboard hand, so as to involve risk of collision, she starboarded her helm in an effort to cross ahead of the other vessel, and failed to stop and reverse seasonably.

5. In that she failed to sound whistle signals, indicating her manœuvres immediately before the collision, in seasonable time, and altogether omitted the reversing signal.

6. In other respects to be shown at the trial.

Fifteenth. The shipment referred to in detail in the eighth article of this libel, aggregating in value the sum of $2,485, including the prepaid freight thereon, was fully insured by the owner
34 thereof under marine policies issued by the libellant, Nord-Deutsche Insurance Company, against marine perils during the said voyage of the Alleghany. Under said contracts of insurance the libellant, Nord-Deutsche Insurance Company, became liable for

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the loss sustained by the owner of the said cargo in consequence of the loss of the Alleghany, as aforesaid, and has paid, for the benefit of the said owner of the said cargo, the amount necessary to indemnify the said owner for its damages sustained by reason of the collision, namely, the amount of the value of the said cargo as set forth in article Eighth of this libel, amounting in the aggregate to $2,485, and has succeeded by right of subrogation and assignment to the rights of the owner of the said cargo to sue for and recover the same herein.

Sixteenth. The various shipments referred to in detail in the ninth article of this libel, aggregating in value the sum of $364.99, including the prepaid freight thereon, were fully insured by the owners thereof under marine policies issued by the libellant, Union Insurance Society of Canton, Limited, against marine perils during the said voyage of the Alleghany. Under said contracts of insurance, the libellant, Union Insurance Society of Canton, Limited, became liable for the losses sustained by the owners of the said cargo, in consequence of the loss of the Alleghany as aforesaid, and has paid, for the benefit of the respective owners of the said shipments, the amounts necessary to indemnify them for their damages, sustained by reason of the collision, namely, the amount of the values of the said several shipments as set forth in Article Ninth of this libel, amounting in the aggregate to $364.99, and has succeeded by right of subrogation and assignment to the rights of the owners of the said shipments respectively, to sue for and recover the same herein.

Seventeenth. The shipment referred to in detail in the Tenth Article of this libel, aggregating in value the sum of $230, including the prepaid freight thereon, was fully insured by the owner thereof under marine policies issued by the libellant, Commercial Union Assurance Company, Limited, against marine perils during the said voyage of the Alleghany. Under said contracts of insurance, the libellant, Commercial Union Assurance Company, Limited, became liable for the loss sustained by the owner of the said cargo, in consequence of the loss of the Alleghany, as aforesaid, and has paid, for the benefit of the owner of the said shipment, the amount necessary to indemnify it for its damage sustained by reason of the collision, namely, the amount of the value of the said shipment as set forth in the Tenth Article of this libel, amounting in the aggregate to $230, and has succeeded by right of subrogation and assignment to the rights of the owner of the said shipment to sue for and recover the same herein.

Eighteenth. The shipments referred to in detail in the Eleventh Article of this libel, aggregating in value the sum of $1,562.15, including the prepaid freight thereon, were fully insured by the owners thereof under marine policies issued by underwriters at Lloyds, London, against marine perils during the said voyage of the Alleghany. Under said contracts of insurance the said underwriters became liable for the losses sustained by the owners of the said cargo in consequence of the loss of the Alleghany, and have paid, for the benefit of the said owners of said cargo, the amount necessary

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to indemnify the said owners for their damages sustained by reason of the collision, namely, the amount of the value of the said cargo as set forth in Article Eleventh of this libel, amounting in the aggregate to $1,562.15, and in consideration of such payments said shippers duly assigned all their rights and interest in the said goods to the Executive Committee of the Corporation of Lloyds.

Nineteenth. The various shipments referred to in detail in Articles Twelfth and Thirteenth of this libel, aggregating in value the sum of $10,175, including the prepaid freight thereon, were fully insured by the owners thereof under marine policies issued by the libellant, Ætna Insurance Company, against marine perils during the said voyage of the Alleghany. Under said contracts of insurance, the libellant, Ætna Insurance Company, became liable for the losses sustained by the owners of the said cargo in consequence of the loss of the Alleghany as aforesaid, and has paid, for the benefit of the respective owners of the said shipments, the amounts necessary to indemnify them for their damages sustained by reason of the collision, namely, the amounts of the values of the said several shipments as set forth in Articles Twelfth and Thirteenth of this libel, amounting in the aggregate to $10,175, and has succeeded by right of subrogation and assignment to the rights of the owners of the said shipments respectively to sue for and recover the same.

Twentieth. The respondent, Furness, Withy & Company,
37 Limited, is a foreign corporation, and, as libellants are informed and believe, none of its officers or directors resides or is within this district. Said respondent, however, has certain property within the district, the British steamship Richmond, her engines, boilers, tackle, apparel and furniture, of which the respondent, Furness, Withy & Company, Limited, is sole owner.

Twenty-first. All and singular the premises of this libel are true and within the Admiralty and Maritime jurisdiction of this Honorable Court.

Wherefore, the libellants pray that process in due form may issue, with clause of foreign attachment, against the respondent, Furness, Withy & Company, Limited, and further commanding the Marshal of this district, in case the said respondent cannot be found within the district, to attach its said steamship Richmond, her engines, boilers, tackle, apparel and furniture, and that a decree may be entered in favor of the libellant, Nord Deutsche Insurance Company, in the sum of $2,485, in favor of the libellant, Union Insurance Society of Canton, Limited, in the sum of $364.99, in favor of the libellant, Commercial Union Assurance Company, Limited, in the sum of $230, in favor of the libellant, The Corporation of Lloyds, in the sum of $1,562.15, and in favor of the libellant, Ætna Insurance Company, in the sum of $10,175, making in all the sum of $14,817.14, with interest thereon and the costs of this action, or that the Court will grant to the libellants such other or further relief as the justice of the cause may require.

CONVERS & KIRLIN,
Proctors for Libellants.

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38 SOUTHERN DISTRICT OF NEW YORK,
County of New York, ss:

John C. Eustace, being duly sworn, says: That he is Vice-President of the Corporation of Willcox, Peck & Hughes, and that the said corporation is the agent in New York of the libellants, Nord Deutsche Insurance Company and Union Insurance Society of Canton, Limited; that the foregoing libel is true of his own knowledge, except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

The sources of his information and the grounds of his belief as to the matters not within his own knowledge are reports and claims made to and upon the libellants by the shippers, consignees and owners of the cargo hereinbefore mentioned, or by their representatives.

The reason that this verification is not made by the libellants is that they are foreign corporations, and the reason that it is not made by any officer of the said corporation is that none of them is at present within the United States.

JOHN C. EUSTACE.

Sworn to before me this 1st day of July, 1912.

[SEAL.] GEO. A. WASHINGTON,
Notary Public, New York County.

[Endorsed:] Libel, filed: July 2, 1912.

39 At a Stated Term of the United States District Court for the Southern District of New York, held at the Court Rooms thereof, in the Post Office Building, in the Borough of Manhattan, City of New York, on the 9th day of August, 1912.

Present: Hon. George C. Holt, U. S. District Judge.

NORD-DEUTSCHE INSURANCE COMPANY, UNION INSURANCE SOCIETY of Canton, Limited, Commercial Union Assurance Company, Limited, The Corporation of Lloyds, and Ætna Insurance Company, Libellants,

against

FURNESS, WITHY & COMPANY, LIMITED, and HAMBURG-AMERIKANISCHE PACKETFAHRT AKTIEN-GESELLSCHAFT, Respondents.

Order Amending Libel.

On the underwritten consent and on motion of Convers & Kirlin, proctors for all the libellants in the above-entitled action, it is hereby

Ordered, that the libel heretofore filed herein be and it hereby is amended in the following particulars:

First. In Article Eighth of the libel add to the end of that article the following paragraph:

40 "2. On or about February 1, 1912, at New York, Morris & Company shipped in good order and condition on board the

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steamship Alleghany, bound from New York to Port au Prince, the following 39 packages of merchandise: 5 tierces compound; 1 case compound; 5 tierces lard; 20 bbls. pork and 8 bbls. beef, O., L. & Co.
marked EN consigned to Oloffson, Lucas & Co., at Port
Port au Prince
au Prince.

"On or about February 1, 1912, at New York, Morris & Company also shipped in good order and condition on board the steamship Alleghany, the following 35 packages of merchandise: 10 bbls. pork; 10 half bbls. pork; 5 bbls. beef, and 10 half bbls. beef, GB
marked Ol & Co. consigned to order of Morris & Com-
Port au Prince
pany, at Port au Prince.

"Freight on the said shipments in the sums of $61.99 and $35.72, respectively, was paid at New York. The aggregate value of the 74 packages of merchandise aforesaid, including the prepaid freight thereon, was $1,435.00.

"The Hamburg-American Line duly issued its bills of lading for the said 74 packages of merchandise aforesaid, reciting the shipment thereof on board the steamship Alleghany, and agreeing to transport and deliver the same unto the consignees mentioned in the said bills of lading at Port au Prince."

Second. In Article Fifteenth of the libel change the amount $1,050 to read $2,485, wherever the said amount appears in that article.

41 Third. In the Wherefore clause change the amount $1,050 so as to read $2,485, and change the total amount $13,382.14 so as to read $14,817.14.

GEO. C. HOLT,
U. S. District Judge.

We consent to the entry of the foregoing order.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Furness, Withy & Company, Ltd.

[Endorsed:] Order amending libel, entered: August 13, 1912.

42 To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The answer of Furness, Withy & Company, Limited, to the libel of Nord-Deutscher Insurance Company, Union Insurance Society of Canton, Limited, Commercial Union Assurance Company, Limited, The Corporation of Lloyds, and the Ætna Insurance Company, in a cause of collision, civil and maritime, alleges as follows:

First. The respondent admits the first, second, third, fourth, fifth, sixth and seventh articles of the libel.

Second. The respondent denies any knowledge or information

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sufficient to form a belief as to the allegations of the eighth, ninth, tenth, eleventh, twelfth and thirteenth articles of the libel.

Third. The respondent admits that on February 2, 1912, shortly after 11 o'clock A. M. the Alleghany and the Pomaron were in collision at a point about 100 miles east of Cape Henry; that the Alleghany afterwards sank; that shortly prior to the collision the Alleghany was on a course approximately south and the Pomaron was on a course approximately east; that the vessels were on crossing courses and the Alleghany had the Pomaron on her own starboard hand; that the Pomaron gave a single short blast signal. The respondent denies that the vessels were proceeding through falling snow and further denies each and every allegation of fault on the part of the Pomaron contained in the fourteenth article of the libel.

Fourth. The respondent denies any knowledge or information sufficient to form a belief as to the fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth articles of the libel.

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Fifth. The respondent admits the twentieth article of the libel.

Sixth. The respondent admits jurisdiction and denies the other allegation of the twenty-first article of the libel.

Seventh. Further answering, the respondent alleges as follows: The respondent is a corporation created by and existing under the laws of the United Kingdom of Great Britain and Ireland, and is the owner of the British steamship Pomaron, which is a steel screw steamship of 1,809 tons gross, 1,127 tons net, 278 feet long, 40.5 feet beam and 20.5 feet in depth of hold. Until the collision the Pomaron was tight, staunch, strong and in all respects seaworthy.

On February 1, 1912, the Pomaron left Baltimore bound for Leith, laden with grain and general cargo. She passed Cape Henry between midnight and 1 A. M. on the 2nd, and set a course E. by N. ¼ N. magnetic, her compass course being E. by N., which course she maintained until just before the collision. The weather was fine and clear and the wind a moderate breeze from the west. The ship was making about nine knots an hour.

About 10:35 A. M. the first officer of the Pomaron who was in charge of her navigation, sighted on the port bow a steamship, distant about ten miles, which was apparently steering a course about south. The bearing of this vessel, which proved to be the Alleghany, did not change as she approached, but the Pomaron kept her course and speed until she saw that the Alleghany was doing nothing whatever to keep out of the way of the Pomaron. The first officer of the Pomaron, therefore blew one blast of his whistle and at the same time ordered the helm a little to port. Shortly afterwards the Alleghany suddenly blew a signal of two blasts, indicating that she was directing her course to port with the intention of crossing the Pomaron's bows. Seeing that a collision was inevitable, the first officer of the Pomaron ordered the engines full speed astern and the helm put hard a-port in an effort to ease the blow. The Alleghany kept on at full speed across the Pomaron's bows, at the last moment swinging apparently under

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a starboard helm, and the vessels came together, the Pomaron's stem striking the Alleghany a glancing blow on her starboard side abaft the engine room. The way of the Pomaron was almost checked at the time of the collision, but the Alleghany was swinging rapidly to port and went on at full speed for some distance. The Pomaron stood by to render assistance and took all the crew and passengers on board when it was found that the Alleghany was sinking.

Ninth. By reason of the collision the Pomaron was seriously damaged, her bow and stem being twisted to starboard, her port anchor lost and many of her plates and frames broken.

Tenth. The collision was not caused or contributed to by any negligence on the part of the Pomaron or of those in charge of her, but was due solely to the negligence of the Alleghany in the following respects among others:

45 1. In that a good lookout was not maintained.

2. In that there was no officer or any competent person in charge of her navigation for some time prior to the collision.

3. In that although she had the Pomaron on her starboard hand she did not keep out of the way of the Pomaron.

4. In that she made no change of course until too late to avoid a collision.

5. In that she starboarded her helm, and attempted to cross the Pomaron's bows.

6. In that she did not port her helm or stop and reverse in time to avoid a collision.

7. In that she did nothing to avoid a collision. All and singular the premises are true.

Wherefore, the respondent prays that the libel herein may be dismissed, with costs.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Respondent.

SOUTHERN DISTRICT OF NEW YORK.
County of New York, ss:

Charles C. Burlingham, being duly sworn, says: I am a member of the firm of Burlingham, Montgomery & Beecher, proctors for the respondent herein. I have read the foregoing answer and the same is true to the best of my knowledge, information and belief. The sources of my knowledge and information are statements by the master, officers and crew of the Pomaron. The reason why I make this verification is that the respondent is a foreign

46 corporation none of whose officers is within the City of New York.

CHARLES C. BURLINGHAM.

Sworn to before me this 8th day of October, 1912.

[SEAL.] CHAUNCEY I. CLARK,
Notary Public, Kings County.

Certificate filed in New York County.

[Endorsed:] Answer filed October 9, 1912.

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47 To the Honorable the Judges of the United States District Court for the Southern District of New York:

The libel and complaint of Walter D. Despard, as Assignee of the owners of certain cargo on board the steamer Alleghany, against Furness, Withy & Company, Limited, in a cause of collision, civil and maritime, respectfully shows and alleges:

First. Libellant is a resident of New York City, and is the assignee of the owners of certain cargo on board the steamer Alleghany on the occasion of a collision on February 2nd, 1912, between said steamer and the British steamer Pomaron, off the coast of Virginia—as a result of which said steamer Alleghany was sunk and, with her cargo, including that owned by the assignors of libellant, became a total loss.

Second. At all the times hereinafter mentioned, the respondent, Furness, Withy & Company, Limited, was and is a foreign corporation, organized under the laws of the Kingdom of Great Britain and Ireland, and was and now is the sole owner of the British steamer Pomaron. Said respondent has property, credits and effects within this District.

Third. On or about the first day of February, 1912, the German steamer Alleghany, with a general cargo on board, including a large quantity of cargo owned by the assignors of libellant—the details of which are set out in "Schedule A" hereto annexed and made a part hereof—left the port of New York, bound for various ports in the West Indies. While proceeding on her voyage, and at about 11 A. M. on the morning of February 2nd, 1912, the
48 Alleghany was run into by the British steamer Pomaron at a point about 90 miles east of Cape Henry, Virginia, as a result of which the Alleghany was sunk, and with her cargo, including that owned by libellant's assignors, became a total loss. Libellant alleges, upon information and belief, that prior to the collision the Alleghany was proceeding on a course of South 4° West, magnetic, and the Pomaron—which had left Hampton Roads bound for European ports—was standing on a course of East by North ¼ North, magnetic. The weather was clear, and both vessels were proceeding at full speed, the Alleghany making about 12 or 13 knots per hour, the Pomaron about 9 knots per hour. When the Alleghany and the Pomaron were first called upon to navigate with reference to each other, they were on crossing courses—the Alleghany having the Pomaron on her own starboard hand. At this time the navigating officer of the Alleghany was in the chart room, working up his position from observations taken shortly before. There was no officer on the bridge, and no sufficient lookout was being maintained. On the other hand, the chief officer of the Pomaron was in charge of the navigation of his vessel, and first made out the Alleghany several miles away at a bearing given in the log book of the Pomaron as Northeast. The Alleghany and the Pomaron continued to approach each other until they were about a mile apart, at which time the officer in charge of the Pomaron observed that the Alleghany was continuing on her southerly course, proceeding at a speed of between twelve and thirteen knots per hour, with no one on

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her bridge. In that situation the Pomaron blew a signal of one whistle and ported her helm, and although the said whistle remained unanswered, and although it was apparent that the
49 Alleghany was keeping her course and speed, the Pomaron continued on at her full speed of about nine knots and under her port helm, until the distance between the steamers was reduced from one mile to a half mile. At this point the Alleghany blew a signal of two whistles, indicating that her helm was being starboarded and that she would continue ahead and across the bows of the Pomaron. Thereupon the engines of the Pomaron were reversed at full speed and her helm put hard-a-port and kept hard-a-port until the stem of the Pomaron came into collision with the starboard side of the Alleghany at a point abaft the engine room, doing such damage to the Alleghany that she shortly afterward filled and sank, and, with her cargo, became a total loss.

Fourth. Said collision and consequent damage were not caused or contributed to by any default or negligence on the part of your libellant, but were caused by the negligence and fault of both the steamers Alleghany and Pomaron more especially in the following particulars, among others which will be pointed out upon the trial of this action, to wit:

On the part of the steamer Alleghany:

1. In that a good lookout was not maintained.

2. In that she failed to give timely signals of her intention to continue across the bows of the Pomaron.

3. In that she failed to take proper measures to avoid collision after she saw or should have seen that the Pomaron was continuing her course to starboard in violation of the starboard-hand rule.

50 On the part of the steamer Pomaron.

1. In that a good lookout was not maintained.

2. In that she failed to keep her course as well as her speed as required by the starboard-hand rule.

3. In that, while she and the Alleghany were approaching each other on crossing courses, and when they were a mile apart, she negligently blew a signal of one whistle and ported her helm in a reckless attempt to cross the bows of the Alleghany.

4. In thereafter continuing at full speed under a port helm until the distance between the vessels was decreased from one mile to a half mile while her one whistle signal remained unanswered, and while it was obvious that the Alleghany was continuing ahead without change of course or speed, with no one on her navigating bridge.

5. In failing seasonably to stop and reverse in order to avoid a collision.

6. In putting her helm to port instead of to starboard after the Alleghany blew her signal of two whistles when the vessels were half a mile apart.

Fifth. By reason of the premises libellant, as assignee of the owners of the cargo set out in "Schedule A," has sustained damage amounting in the aggregate to the sum of Fifteen thousand eight hundred forty-six and 13/100 ($15,846.13) dollars, no part of which has been paid, although duly demanded.

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Sixth. The respondent, Furness, Withy & Company,
51 Limited, is a foreign corporation and, as libellant is informed and believes, none of its officers or directors reside in this District. Said respondent, however, has certain property within this District, including the British steamer Richmond, her engines, boilers, tackle, apparel and furniture, of which the respondent, Furness, Withy & Company, Limited, is sole owner.

Seventh. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant prays that process may issue with clause of foreign attachment against the respondent, Furness, Withy & Company, Limited, citing it to appear and answer in the premises, and further commanding the Marshal of this District in case the said respondent cannot be found within the District, to attach its said steamship Richmond, her engines, boilers, tackle, apparel and furniture, and that a decree may be entered against the respondent in favor of the libellant for the amount of his damages aforesaid, with interest thereon, together with the costs and disbursements of this action, and that the Court may grant such further and other relief as the justice of the cause may require.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Libellant,
64 *Wall Street, New York City.*

52 STATE OF NEW YORK,
County of New York, ss:

Walter D. Despard, being duly sworn, deposes and says: That he is the libellant herein; that he has read the foregoing libel and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

WALTER D. DESPARD.

Sworn to before me this 11th day of October, 1912
[SEAL.] RUSSELL H. PORTER,
Notary Public, New York County.

SCHEDULE A.

H. Becker & Co., 1289 pkgs. Merchandise	$10,883.00
Holsten-Brauerei, 40 cases Beer	292.80
Langstaff, Ehrenburg & Pollak, 2 cases Yarn	578.40
Nottebohm & Co., 2 bales Jute Bags	225.60
Richard Korn, 2 cases Grave-stones	24.00
Hermann Strack, 500 bags Rice	2,376.00
Robert E. Stecher, 4 cases Papers, 1 case packthread	116.64
Walty & Co., 3 bales Cotton Goods	1,033.51
G. Vogtmann & Co., 10 casks Colors, 14 bdls. Shovels	316.18
Total	$15,846.13

[Endorsed:] Libel, filed October 11, 1912.

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53 To the Honorable the Judges of the United States District Court for the Southern District of New York:

The answer of Furness, Withy & Company, Limited, to the libel and complaint of Walter D. Despard, in a cause of collision, civil and maritime, alleges as follows:

First. The respondent admits that a collision occurred on February 2, 1912, between the steamships Alleghany and Pomaron off the coast of Virginia, as a result of which the Alleghany was sunk and with her cargo became a total loss. Further answering the respondent denies any knowledge or information sufficient to form a belief as to the other allegations of the first article of the libel.

Second. The respondent admits the second article of the libel.

Third. The respondent denies any knowledge or information as to the nature, quantity or value of cargo on board the Alleghany, but admits that said steamship left New York on February 1, 1912, bound for various ports in the West Indies; and that on February 2, 1912, at a point about 90 miles east of Cape Henry, the Alleghany was sunk in collision with the British steamship Pomaron. Further answering, the respondent denies that the facts and circumstances of the collision are accurately set forth in the third article of the libel, and alleges that the true facts as to said collision are set forth in the eighth article of the answer.

Fourth. The respondent denies that said collision and consequent damage were caused or contributed to by any negligence or fault on the part of the steamship Pomaron and further
54 denies each and every charge of fault on the part of the Pomaron alleged in the fourth article of the libel.

Fifth. The respondent admits demand and non-payment, and it denies any knowledge or information sufficient to form a belief as to the other allegations of the fifth article of the libel.

Sixth. The respondent admits the sixth article of the libel.

Seventh. The respondent admits the jurisdiction and denies the other allegation of the seventh article of the libel.

Eighth. Further answering, the respondent alleges as follows:

On February 1, 1912, the Pomaron, which is a steel screw steamship of 1809 tons gross, 1127 tons net, 278 feet long, 40.5 feet beam and 20.5 feet in depth of hold, left Baltimore bound for Leith, laden with grain and general cargo. She passed Cape Henry between midnight and 1 A. M. on the 2nd, and set a course E. by N. ¼ N. magnetic, her compass course being E. by N., which course she maintained until just before the collision. The weather was fine and clear and the wind a moderate breeze from the west. The ship was making about nine knots an hour.

About 10:35 A. M., the first officer of the Pomaron, who was in charge of her navigation, sighted on the port bow a steamship, distant about ten miles, which was apparently steering a course about south. The bearing of this vessel, which proved to be the Alleghany, did not change as she approached, but the Pomaron kept her course and speed until she saw that the Alleghany
55 was doing nothing whatever to keep out of the way of the Pomaron. The first officer of the Pomaron, therefore blew

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one blast of his whistle and at the same time ordered the helm a little to port. Shortly afterwards the Alleghany suddenly blew a signal of two blasts, indicating that she was directing her course to port with the intention of crossing the Pomaron's bows. Seeing that a collision was inevitable, the first officer of the Pomaron ordered the engines full speed astern and the helm put hard-a-port in an effort to ease the blow. The Alleghany kept on at full speed across the Pomaron's bows, at the last moment swinging apparently under a starboard helm, and the vessels came together, the Pomaron's stem striking the Alleghany a glancing blow on her starboard side abaft the engine room. The way of the Pomaron was almost checked at the time of the collision, but the Alleghany was swinging rapidly to port and went on at full speed for some distance. The Pomaron stood by to render assistance and took all the crew and passengers on board when it was found that the Alleghany was sinking.

Ninth. By reason of the collision the Pomaron was seriously damaged, her bow and stem being twisted to starboard, her port anchor lost and many of her plates and frames broken.

Tenth. The collision was not caused or contributed to by any negligence on the part of the Pomaron or of those in charge of her, but was due solely to the negligence of the Alleghany in the following respects among others:

1. In that a good lookout was not maintained.

2. In that there was no officer or any competent person
56 in charge of her navigation for some time prior to the collision.

3. In that although she had the Pomaron on her starboard hand she did not keep out of the way of the Pomaron.

4. In that she made no change of course until too late to avoid a collision.

5. In that she starboarded her helm, and attempted to cross the Pomaron's bows.

6. In that she did not port her helm or stop and reverse in time to avoid a collision.

7. In that she did nothing to avoid a collision.

All and singular the premises are true.

Wherefore the respondent prays that the libel herein may be dismissed, with costs.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Respondent.

SOUTHERN DISTRICT OF NEW YORK,
County of New York, ss:

Charles C. Burlingham, being duly sworn, says: I am a member of the firm of Burlingham, Montgomery & Beecher, proctors for the respondent herein. I have read the foregoing answer and the same is true to the best of my knowledge, information and belief. The sources of my knowledge and information are statements by the master, officers and crew of the Pomaron. The reason why

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I make this verification is that the respondent is a foreign
57 corporation none of whose officers is within the City of New York.

CHARLES C. BURLINGHAM.

Sworn to before me this 19th day of November, 1912.
[SEAL.] ROBINSON LEECH,
Notary Public, Kings County.

Certificate filed in New York County.

[Endorsed:] Answer filed November 19, 1912.

58 The following libels to recover damages for loss of cargo filed by Messrs. Harrington, Bigham & Englar, on behalf of:

Eugene J. F. Coleman for	$5,768
Marshall K. Weidensaul for	1,071.65
Francis W. Van Praag for	1,048.00
Orson G. Orr for	31,125.30
Laura Moore for	12,330.00
Louis Bertschman for	29,293.65

and the answers thereto filed by Burlingham, Montgomery & Beecher are omitted from the printing of the transcript of record, see stipulation as to record on appeal at page 284 of this record.

59 In the District Court of the United States for the Southern District of New York.

To the Honorable the Judges of the said Court:

The libel and complaint of the Boston Insurance Company, a corporation, against Furness, Withy & Company, Limited, a corporation, in cause of collision, civil and maritime, alleges as follows:

First. The Boston Insurance Company, the libellant, is a corporation, duly organized and existing under the laws of the State of Massachusetts. Furness, Withy & Company, Limited, the respondent, is a corporation, organized and existing under the laws of the Kingdom of Great Britain and Ireland, and at the time of the collision, hereinafter mentioned, was the owner of the British steamship Pomaron.

Second. On or about February 1st, 1912, the steamship Alleghany sailed from the Port of New York, bound on a voyage to various West Indian and South American ports.

Third. Heilbron, Wolff & Company, of New York, shipped on board said steamship Alleghany at New York, certain goods and merchandise of a value of Nine thousand seventeen and 39/100 ($9,017.39) dollars, to be carried by said steamship Alleghany on said voyage and to be delivered at the various ports in the West Indies and South America.

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60 Fourth. On or about February 2, 1912, the said steamship Alleghany, when in a position about one hundred miles east of Cape Henry, was run into and sunk by the said steamship Pomaron. As a result of the said collision, the said Alleghany, together with all the cargo on board, including the said goods and merchandise shipped by Heilbron, Wolff & Company, became a total loss.

Fifth. The Boston Insurance Company, the libellant herein, duly issued its policy of insurance to Heilbron, Wolff & Company, insuring them against loss upon said goods and merchandise during said voyage, and the said Boston Insurance Company has paid to the said Heilbron, Wolff & Company the sum of Nine thousand seventeen and 39/100 ($9,017.39) dollars on account of the loss of the said goods and merchandise, as a loss under said policy of insurance.

Sixth. Upon information and belief, the said collision between the steamships Pomaron and Alleghany occurred in the following manner:

Prior to the collision the Alleghany was on a course south four degrees west magnetic. The course of the Pomaron was east by north one-quarter north magnetic. The weather was clear. Both vessels were proceeding at full speed, the Alleghany making twelve or thirteen knots an hour and the Pomaron about nine knots an hour. The first officer of the Pomaron was in charge of her navigation and saw the Alleghany when the vessels were ten or twelve miles apart. The Alleghany was then bearing about northeast from the Pomaron. Both vessels continued on the courses above mentioned, at full speed. Later, the first officer of the
61 Pomaron used his glasses and saw no person on the bridge of the Alleghany and in charge of her navigation. The said first officer, however, made no change in the course or speed of the Pomaron until the two vessels were about a mile apart, when, still seeing no one on the bridge of the Alleghany and in charge of her navigation, he gave a signal of one whistle, and without waiting for any reply to that signal from the Alleghany, ported his helm. This signal was not answered by the Alleghany and the Alleghany continued on her course, without any change, at full speed. Although the signal of the Pomaron was not answered and no change was made in the course or speed of the Alleghany and no one could be seen on her bridge, in charge of her navigation, the Pomaron continued at full speed ahead under a port helm until the vessels were about half a mile apart, when the Alleghany gave a signal of two blasts, indicating that her helm was being put to starboard. The Pomaron made no reply to this signal from the Alleghany, but some time after it was given the engines of the Pomaron were put to full speed astern and her wheel was put hard to port. The vessels continued to approach each other and came into collision, the Pomaron striking the Alleghany on the starboard side of the latter, abaft of her engine room. The Alleghany sank a short time afterwards, and tog-ther with all her cargo, including the goods and merchandise shipped by the said Heilbron, Wolff & Company, became a total loss.

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Seventh. Said collision resulted from the negligence of those in charge of the navigation of the Pomaron in the following particulars:

1. In failing to maintain an efficient lookout.

2. In failing to keep her course and speed.

62 3. In blowing one whistle and attempting to cross the bows of the Alleghany, when the first officer in charge of the navigation of the Pomaron saw that no officer of the Alleghany was on her bridge and in charge of her navigation.

4. In porting her helm after giving a signal of one whistle without waiting for an answering signal from the Alleghany, with the knowledge on the part of her first officer that no officer of the Alleghany was on her bridge, in charge of her navigation, and with the knowledge that the Alleghany was holding her course, at full speed.

5. In continuing at full speed after failing to receive any answering signal from the Alleghany, with the knowledge on the part of her first officer that the Alleghany had no officer on her bridge, in charge of her navigation, and with the knowledge that the Alleghany was holding her course and speed.

6. In failing to stop and reverse at a proper time.

7. In putting her helm to port and not to starboard, after the Alleghany gave a signal of two blasts.

8. In failing to take such precautions as were required by the ordinary practice of seamen or by the special circumstances of the case.

9. In such other particulars as will be pointed out upon the trial of this cause.

Eighth. Furness, Withy & Company, Limited, is engaged in business in the City of New York, having an office at No. 1, Broadway.

Ninth. The libellant claims to recover herein from the re-

63 spondent the said sum of Nine thousand seventeen and 39/100 ($9,017.39) dollars, with interest thereon from February 2d, 1912.

Tenth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore: The libellant prays that process in due form of law, according to the course and practice of this Honorable Court in admiralty and maritime causes, may issue against the said Furnes, Withy & Company, Limited, and that it be compelled to answer, on oath, all and singular the matters aforesaid, and this Honorable Court will be pleased to decree payment of the damages aforesaid, with interest and costs, and that the libellant may have such other and further relief as it is justly entitled to receive.

WILLIAMS & STEVENSON,
Proctors for Libellant.

Office & P. O. Address, #27 Cedar Street, Borough of Manhattan, New York City.

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SOUTHERN DISTRICT OF NEW YORK, *ss:*

Ward Williams, being duly sworn, deposes and says that he is the Vice-President of the Boston Insurance Company, the libellant herein; that he has read the foregoing libel and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

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The sources of deponent's information are the bills of lading issued to Heilbron, Wolff & Company by the said steamship Alleghany, invoices of the said Heilbron, Wolff & Company and information obtained as to statements made by the officers of the said steamships Alleghany and Pomaron as to the facts relating to said collision.

WARD WILLIAMS.

Sworn to and subscribed before me this 28th day of October, A. D. 1912.

[SEAL.] BALTHASAR J. CARUSO,
Notary Public, Kings Co.

Certificate filed in New York Co.

[Endorsed:] Libel filed October 30, 1912.

65 To the Honorable The Judges of the District Court of the United States for the Southern District of New York:

The answer of Furness, Withy & Company, Limited, to the libel of the Boston Insurance Company in a cause of collision, civil and maritime, alleges as follows:

First. The respondent admits the first and second articles of the libel.

Second. The respondent denies any knowledge or information as to the allegations of the third article of the libel.

Third. The respondent admits that on February 2, 1912, the Alleghany was sunk in collision with the Pomaron when about one hundred miles east of Cape Henry and became a total loss. Further answering, the respondent denies any knowledge or information as to the other allegations of the fourth article of the libel.

Fourth. The respondent denies any knowledge or information sufficient to form a belief as to the allegations of the fifth article of the libel.

Fifth. The respondent denies that the facts and circumstances of the collision are accurately set forth in the sixth article of the libel and alleges that the true facts as to said collision are set forth in the tenth article of this answer.

Sixth. The respondent denies each and every allegation of the seventh article of the libel.

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Seventh. The respondent admits the eighth article of the
66 libel.

Eighth. The respondent denies any knowledge or information as to the allegations of the ninth article of the libel.

Ninth. The respondent admits the jurisdiction and denies the other allegation of the tenth article of the libel.

Tenth. Further answering the respondent alleges as follows:

On February 1, 1912, the Pomaron, which is a steel screw steamship of 1,809 tons gross, 1,127 tons net, 278 feet long, 40.5 feet beam and 20.5 feet in depth of hold, left Baltimore bound for Leith laden with grain and general cargo. She passed Cape Henry between midnight and 1 A. M. on the 2nd, and set a course E by N ¼ N magnetic, her compass course being E by N, which course she maintained until just before the collision. The weather was fine and clear and the wind a moderate breeze from the west. The ship was making about nine knots an hour.

About 10.35 A. M. the first officer of the Pomaron, who was in charge of her navigation, sighted on the port bow a steamship, distant about ten miles, which was apparently steering a course about south. The bearing of this vessel, which proved to be the Alleghany, did not change as she approached but the Pomaron kept her course and speed until she saw that the Alleghany was doing nothing whatever to keep out of the way of the Pomaron. The first officer of the Pomaron, therefore, blew one blast of his whistle and at the same time ordered the helm a little to port. Shortly afterwards the Alleghany suddenly blew a signal of two
67 blasts indicating that she was directing her course to port with the intention of crossing the Pomaron's bows. Seeing that a collision was inevitable, the first officer of the Pomaron ordered the engines full speed astern and the helm put hard-a-port in an effort to ease the blow. The Alleghany kept on at full speed across the Pomaron's bows, at the last moment swinging apparently under a starboard helm, and the vessels came together, the Pomaron's stem striking the Alleghany a glancing blow on her starboard side abaft the engine room. The way of the Pomaron was almost checked at the time of the collision, but the Alleghany was swinging rapidly to port and went on at full speed for some distance. The Pomaron stood by to render assistance and took all the crew and passengers on board when it was found that the Alleghany was sinking.

Eleventh. By reason of the collision the Pomaron was seriously damaged, her bow and stem being twisted to starboard, her port anchor lost and many of her plates and frames broken.

Twelfth. The collision was not caused or contributed to by any negligence on the part of the Pomaron or of those in charge of her, but was due solely to the negligence of the Alleghany in the following respects among others:

1. In that a good lookout was not maintained.

2. In that there was no officer or any competent person in charge of her navigation for some time prior to the collision.

3. In that although she had the Pomaron on her starboard hand she did not keep out of the way of the Pomaron.

68 4. In that she made no change of course until too late to avoid a collision.

5. In that she starboarded her helm, and attempted to cross the Pomaron's bows.

6. In that she did not port her helm or stop and reverse in time to avoid a collision.

7. In that she did nothing to avoid a collision.

All and singular the premises are true.

Wherefore the respondent prays that the libel herein may be dismissed, with costs.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Respondents.

SOUTHERN DISTRICT OF NEW YORK,
County of New York, ss:

Charles C. Burlingham, being duly sworn, says: I am a member of the firm of Burlingham, Montgomery & Beecher, proctors for the respondent herein. I have read the foregoing answer and the same is true to the best of my knowledge, information and belief. The sources of my knowledge and information are statements by the master, officers and crew of the Pomaron. The reason why I make this verification is that the respondent is a foreign corporation none of whose officers is within the City of New York.

CHARLES C. BURLINGHAM.

Sworn to before me this 19th day of November, 1912.

[SEAL.] ROBINSON LEECH,
Notary Public, Kings County.

Certificate filed in New York County.

[Endorsed:] Answer filed Nov. 20, 1912.

69 To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The Libel and Complaint of the

FEDERAL INSURANCE COMPANY, THE SEA INSURANCE COMPANY, LIMITED, and LONDON ASSURANCE CORPORATION,
against
FURNESS, WITHY & COMPANY, LIMITED.

In a Cause of Collision, Civil and Maritime, alleges as follows:

First. The libellant Federal Insurance Company is a corporation organized under the laws of the State of New Jersey; the libellant Sea Insurance Company, Limited, is a corporation organized under the laws of the Kingdom of Great Britain and Ireland, having its principal office in Liverpool, England; and the libellant London

Assurance Corporation is a corporation organized under the laws of the Kingdom of Great Britain and Ireland, having its principal office in London, England.

Each of the said libellants was at the times herein mentioned engaged in the business of marine insurance and had and now have offices and agents within this district.

Second. The respondent, Furness, Withy & Company, Limited, is a corporation organized under the laws of the Kingdom of Great Britain and Ireland, having its principal office in West Hartlepool, England, and at the times herein mentioned was and now is sole owner of the steamship Pomaron. Said respondent has an office, an agent and property within this district.

70 Third. On the 1st day of February, 1912, the steamship Alleghany with a general cargo and mail on board, sailed from the port of New York bound for Inagua, Haiti and other ports in the West Indies and South America, and while proceeding on said voyage and on the 2d day of February, 1912, between the hours of eleven o'clock A. M. and noon, collided with the steamship Pomaron at a point in the Atlantic Ocean about one hundred miles East by North from Cape Henry, and by said collision said steamship Alleghany sustained such injuries that she sank shortly afterwards and with her cargo and mail became a total loss.

Fourth. The cargo and mail on board said steamship Alleghany which was so lost included the following merchandise and property shipped by the firm of G. Amsinck & Co., of the City of New York, viz:

2 Bales Cotton Prints and 10 Kegs Sherry Wine, marked P L S & C Cartagena and consigned to Pineda Lopez & Co., at Cartagena, of the value of $231.25.

1 Case Barthel Lamps and 6 cases Welting marked E. H. Cartagena and consigned to Espriella Hnos, of the value of $447.35;

1 Case Machinery parts, 1 case Shoemaker's supplies, 2 cases nails, 2 cases zinc wire, and 1 case Shoe lasts marked E. Hnos, Cartagena and, by mail, 1 package shoemaker's knives and 2 packages shoe machinery, consigned to Espriella Hnos, at Barranquilla, all of the value of $257.49;

27 Barrels Tallow, marked A. O. A. Barranquilla and consigned to A. Obregon, A. at Barranquilla, of the value of $786.04;

71 5 Cases Axes, 10 cases Edge Tools, 20 Cases Linseed Oil, 10 Bags Pepper, 5 Bags Cloves, 40 Bales Cinnamon and 100 cases Corn-starch, marked Franzalez, Barranquilla, and consigned to Franco, Gonzalez & Co., at Barranquilla, of the value of $909.86;

3 Cases Electric Wire and 1 case tools marked and consigned to Compania de Energia Electrica, Barranquilla, of the value of $143.98;

4 Cases and 13 pieces Mining Machinery and 2 Coils Rope marked B & C, Carranquilla, and consigned to Alzamora, Palacio & Co. at Puerto Colombia, of the value of $813.12;

11 Bundles Iron Pipes, 2 Bags pipe fittings, 1 Case Brass Valves, 6 Bundles Rubber Hose, 2 Cases Paint, 1 Barrel Lampware, 12 Coils Rope, 2 Bundles Furniture, 10 Barrels Coal and Tar, 1 Case

Toy Pistols, 1 Case Paper Caps, and 1 Case Dime Banks, marked P. L. & C. Barranquilla and consigned to Pineda, Lopez & Co., Pto. Colombia of the value of $1,412.22; 5 cases Almond Oil, 4 cases Castor Oil, 10 cases Crackers, 20 Cases Lard, 1 case Nitric Acid, 3 cases Drugs and 1 case Olive Oil, marked D. R. & C. Barranquilla, and consigned to Empresa Hanseatica at Pto. Colombia, of the value of $621.61;

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1 case Spring Scales, 1 case Drainers, 8 cases Coffee Mills, 1 case phono. parts, 5 cases phono. discs, 1 case tools, and 1 case Lamp chimneys, marked F. C. & C. Cartagena, and consigned to Franco Covo & Co., Cartagena, of the value of $837.60;

1 case Machinery Parts, 4 cases Typewriters and 1 case Typewriter supplies, marked J V M, Cartagena, and consigned to J. V. Mogollon, Cartagena, of the value of $714.84;

72 201 Bundles Pine Boards marked Leguerica, Cartagena, and consigned to Leguerica Hnos, Cartagena, of the value of $465.54;

12 bundles Scales, 3 cases Tools, 2 cases Water Coolers, 2 cases Stoves, 1 bundle Coffee Mills, 10 barrels and 3 cases lampware, 1 bundle Corsets, 5 bundles Boiler pipes, 1 case Electrical Supplies and 2 cases Machinery parts, marked D. M. & C., Cartagena, and consigned to Diego, Martinez & Co., Cartagena, of the value of $846.22;

1 Bundle and 2 Cases Pills, 1 Case Bromo Quinine, 1 Case Ointment, 12 Cases Candies and 50 Cases Cornstarch marked B H Cartagena, and consigned to Bustamente Hnos, Cartagena of the value of $608.26;

28 Bales Raw Cotton marked B U, Cartagena and consigned to Banco Union, Cartagena, of the value of $1,461.91;

5 Barrels Potatoes, 2 Barrels Onions, 1 Barrel Lamp Chimneys, 10 Cases Codfish, 2 Bundles Crushed Wheat, 1 Bag and 2 Cases Oats, 10 Cases Soap and 2 Bundles Leaf Tobacco, marked R & C., Cartagena, and consigned to Ramos & Castillo, of the value of $158.16;

7 Cases Butts, 1 Case Screws, 10 Barrels Glassware, 2 Cases Axes, and 3 Bales Cotton Prints marked G V & H. Cartagena and consigned to Pineda, Lopez & Co., Cartagena, of the value of $565.31;

2 Cases Kidney Beans, 5 Cases Scales, 2 Cases Axles, 2 Cases Condensed Milk, 1 Bag Pepper, 20 Cases Canned Goods, 10 Crts. Crackers, 10 Barrels Lard, 10 Barrels Potatoes, 4 Cases Cornstarch, marked Posso, Cartagena, and consigned to Lucindo Posso, Cartagena, of the value of $518.53; and

73 6 Barrels of Petroleum, marked Acueducto de Calanar, Cartagena, and consigned to Pineda, Lopez & Co., Cartagena, of the value of $42.57; the total value of the aforesaid cargo shipped by G. Amsinck & Co., being $11,841.86.

Also the following merchandise shipped by the firm of J. A. Pauli & Co., of New York City, viz.:

10 cases Shears and 2 Cases Mousetraps, marked TBS Pto Colom-

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bia and consigned to Alzamora, Palacio & Co. Pto. Colombia, of the value of $532.30;

1 Barrel, 5 Crates and 1 Case Plumbers' Supplies and 3 Cases Filing Cabinets marked P (anchor) P. Pto. Colombia, consigned to Pacini & Puccini, Pto. Colombia, of the value of $148.74;

6 Cases Lubricating Oil, 1 Box Pump, 2 Bales Paper and 4 Bales Cinnamon, marked L. G. & C. Pto. Colombia, Facatativa, and consigned to Alzamora, Palacio & Co., Pto. Colombia, of the value of $238.67;

And 4 Bales Leather, 2 Bales Cotton Drills and 1 Case Sandpaper, marked A R Pto. Colombia, and consigned to Alzamora, Palacio & Co., Pto. Colombia, of the value of $1,339.93; the total value of the aforesaid merchandise shipped by J. A. Pauli & Co., being $2,259.64.

Also the following merchandise shipped by the firm of Yglesias, Lobo & Co., of the City of New York, viz.:

70 Boxes Corn Flour, 50 Tins Matches and 20 Cases Lanterns, marked Palmar Y. Barranquilla, and consigned to Palacio & M. Z. Aparicio, Barranquilla, of the value of $545.16.

74 Also the following merchandise shipped by Singer Sewing Machine Co., viz.: 17 Packages Sewing Machines, marked G. L. Port au Prince and consigned to Georges Leon, Port au Prince, of the value of $273.97.

Also the following merchandise shipped by A. Fauconnet, viz.: 4 Cases Macaroni, marked L V ¼, consigned to A. de Matteis, Port au Prince, of the value of $35.

Also the following merchandise shipped by C. H. Pattengill, namely: 1 Case Meat Safe and 1 Case Metal and Glassware, marked and consigned to Fernand C. Laraque, Jeremie, Haiti, of the value of $80.24.

Fourth: That insurance was effected upon all of the merchandise mentioned in the preceding (third) article hereof, by or on behalf of the respective owners thereof, and for the full values thereof, with the libellant Federal Insurance Company, against loss or damage by perils of the seas and collision, covering same from port of shipment to the respective ports of destination thereof, and that prior to the filing of this libel the libellant Federal Insurance Company paid to or for the benefit of the respective owners of said merchandise the insured values thereof, the sums so paid by it exceeding in each instance the values stated in the preceding article, which amount in the aggregate to $15,035.87 and that thereupon the libellant Federal Insurance Company succeeded by right of subrogation and by assignment to the rights and causes of action of the several owners of said merchandise for the loss thereof, and is now entitled to sue for and recover the same.

75 Fifth. That the cargo and mail on board said steamship Alleghany which was so lost, included 1 case liquor and color, 1 case raisins and 1 case soap shipped by Geo. Lueders & Company,

to Alzamora, Palacio & Co., at Pto. Colombia, of the value of $201.99. of New York City, marked G L & C, Barranquilla, and consigned

Also two packages of Merchandise sent by the firm of Isaac Brandon & Brother, of New York City, by Registered mail addressed to Espriella Hermanos at Cartagena, of the value of $8.30.

Also 100 Bundles Steel Bars, 20 Pieces Steel Plates, 800 Bundles Galvanized corrugated Sheets, 12 Pieces Galvanized Steel Channels, and 360 Cases Wire Nails, marked L. W. & Co. Puerto Colombia, shipped by United States Steel Products Company and consigned to Lindemeyer, Wiese & Co., Empresa Hanseation at Puerto Colombia, of the value of $5,310.13.

Sixth. That insurance was effected upon all of the merchandise mentioned in the preceding (Fifth) article hereof, by or on behalf of the respective owners thereof, and for the full values thereof, with the libellant Sea Insurance Company, Ltd., against loss or damage by perils of the seas and collision covering same from port of shipment to the respective ports of destination thereof, and that prior to the filing of this libel the libellant Sea Insurance Company paid to or for the benefit of the respective owners of said merchandise the insured values thereof, the sums so paid by it exceeding in each instance the values stated in the preceding article, which amount in the aggregate to $5,520.42, and that thereupon the libellant Sea Insurance Company, Ltd., succeeded by right of subrogation
76 and by assignment to the rights and causes of action of the several owners of said merchandise for the loss thereof and is entitled to sue for and recover the same.

Seventh. That the cargo on board the S. S. Alleghany which was so lost, included the following merchandise shipped by the firm of O. C. Kanzow & Co., of the City of New York, viz.:

F M

20 Bags and 10 Barrels Flour, marked K Port au Prince, and consigned to F. Mollentheil, Port au Prince, of the value of $186.74;

D D B

and 40 packages of various merchandise marked K Petit Goave, and consigned to Dammond D. Brignolle, at Petit Goave, of the value of $554.56, the total value of said cargo shipped by O. C. Kanzow & Co., being $741.30.

Also 1 Barrel Stout, 1 Case Gin, 2 Cases Hams and Bacon, and

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1 Case Waterproof Coats, marked G shipper at Liverpool, England, by James Gibson & Co., on the S. S. Cedric and transshipped at New York to the S. S. Alleghany, consigned to B. P. Reid, at Petit Goave, of the value of £14.5.5 or $69.74.

Also 32 Bundles Bedsteads, 1 Case Brass Bedsteads and fittings, 1 Bale Mattresses and 1 Case Combs, cotton and boots, marked C. D. shipped at Liverpool, England, by F. Farah on the S. S. Laurentic, and transhipped at New York on the S. S. Alleghany, consigned to order at Aux Cayes, of the value of £83.14.8, or $417.78.

Eighth. That insurance was effected upon all of the merchandise mentioned in the preceding (Seventh) article hereof, by or
77 on behalf of the respective owners thereof, and for the full values thereof, with the libellant London Assurance Corpora-

70 (2) In having passed her helm upon hearing her signal of one whistle, and (3) in having kept a proper lookout after the Allegheny had blown a signal of two whistles.

Eleventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore the libellants pray that process may issue against the respondent Furness, Withy & Company, Limited, citing it to appear and answer all and singular the matters aforesaid, and that a decree may be entered against said respondent in favor of the libellants Federal Insurance Company in the sum of $15,005.87, in favor of the Sea Insurance Company, Limited, in the sum of $5,529.62, and in favor of the London Assurance Corporation in the sum of $1,229.62, amounting together to $21,785.11, with interest and costs, and that the libellants may have such other or further relief as may be just.

KNEELAND, HARRISON & HEWITT,
Proctors for Libellants.

SOUTHERN DISTRICT OF NEW YORK, ss:

Henlon Chubb, being duly sworn, deposes and says that he is Vice-President of the libellant Federal Insurance Company, and is a member of the firm of Chubb & Son, the Managers of the United States Branches of the libellants Sea Insurance Company, Limited and London Assurance Corporation. That the foregoing libel is true to the best of his knowledge, information and belief. That the sources of his information and the grounds of his belief as to the matters therein alleged are the records in the New York office of his firm, and statements in the log of the steamship Pomaron.

HENLON CHUBB.

Sworn to before me this 30th day of November, 1902.
[SEAL.] LOUIS H. MAY,
Notary Public, Kings County.

Certificate filed in New York County.

[Endorsed:] Libel filed Dec. 3, 1902.

81 To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The answer of Furness, Withy & Company, Limited, to the libel of the Federal Insurance Company, the Sea Insurance Company, Limited, and London Assurance Corporation, in a cause of collision, civil and maritime, alleges as follows:

First. The respondent admits the first article of the libel.

Second. The respondent admits the second article of the libel.

Third. The respondent admits that a collision occurred on February 2nd, 1902, between the steamships Pomaron and Allegheny in the Atlantic Ocean, and that the Allegheny shortly after-

wards sank. Further answering the respondent denies any knowledge or information sufficient to form a belief as to the other allegations of the third article of the libel.

Fourth. The respondent denies any knowledge or information sufficient to form a belief as to the allegations of both articles of the libel marked "Fourth."

Fifth. The respondent denies any knowledge or information sufficient to form a belief as to the allegations of the fifth article of the libel.

Sixth. The respondent denies any knowledge or information sufficient to form a belief as to the allegations of the sixth article of the libel.

Seventh. The respondent denies any knowledge or information sufficient to form a belief as to the allegations of the seventh
82 article of the libel.

Eighth. The respondent denies any knowledge or information sufficient to form a belief as to the allegations of the eighth article of the libel.

Ninth. The respondent denies that the facts and circumstances of the collision are accurately set forth in the ninth article of the libel and alleges that the true facts as to said collision are set forth in the twelfth article of this answer.

Tenth. The respondent denies each and every allegation as to fault on the part of the steamship Pomaron alleged in the tenth article of the libel.

Eleventh. The respondent admits jurisdiction and denies the other allegation of the eleventh article of the libel.

Twelfth. Further answering the respondent alleges as follows:

On February 1, 1912, the *Pomaron*, which is a steel screw steamship of 1,809 tons gross, 1,127 tons net, 278 feet long, 405 feet beam and 20.5 feet in depth of hold, left Baltimore bound for Leith laden with grain and general cargo. She passed Cape Henry between midnight and 1 A. M. on the 2nd, and set a course E. by N. ¼ N. magnetic, her compass course being E. by N., which course she maintained until just before the collision. The weather was fine and clear and the wind a moderate breeze from the west. The ship was making about nine knots an hour.

About 10:35 A. M. the first officer of the Pomaron, who
83 was in charge of her navigation, sighted on the port bow a steamship, distant about ten miles, which was apparently steering a course about south. The bearing of this vessel, which proved to be the Allegany, did not change as she approached but the Pomaron kept her course and speed until she saw that the Allegany was doing nothing whatever to keep out of the way of the Pomaron. The first officer of the Pomaron, therefore, blew one blast of his whistle and at the same time ordered the helm a little to port. Shortly afterwards the Allegany suddenly blew a signal of two blasts indicating that she was directing her course to port with the intention of crossing the Pomaron's bows, seeing that a collision was inevitable, the first officer of the Pomaron ordered the engine full speed astern and the helm put hard-a-port in an effort

to ease the blow. The Alleghany kept on at full speed across the Pomaron's bows, at the last moment swinging apparently under a starboard helm, and the vessels came together, the Pomaron's stem striking the Alleghany a glancing blow on her starboard side abaft the engine room. The way of the Pomaron was almost checked at the time of the collision, but the Alleghany was swinging rapidly to port and went on at full speed for some distance. The Pomaron stood by to render assistance and took all the crew and passengers on board when it was found that the Alleghany was sinking.

Thirteenth. By reason of the collision the Pomaron was seriously damaged, her bow and stem being twisted to starboard, her port anchor lost and many of her plates and frames broken.

84 Fourteenth. The collision was not caused or contributed to by any negligence on the part of the Pomaron or of those in charge of her, but was due solely to the negligence of the Alleghany in the following respects among others:

1. In that a good lookout was not maintained.

2. In that there was no officer or any competent person in charge of her navigation for some time prior to the collision.

3. In that although she had the Pomaron on her starboard hand she did not keep out of the way of the Pomaron.

4. In that she made no change of course until too late to avoid a collision.

5. In that she starbourded her helm, and attempted to cross the Pomaron's bows.

6. In that she did not port her helm or stop and reverse in time to avoid a collision.

7. In that she did nothing to avoid a collision.

All and singular the premises are true.

Wherefore the respondent prays that the libel herein may be dismissed, with costs.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Respondent.

SOUTHERN DISTRICT OF NEW YORK,
County of New York, ss:

Charles C. Burlingham, being duly sworn, says: I am a member of the firm of Burlingham, Montgomery & Beecher, proctors for the respondent herein. I have read the foregoing answer and
85 the same is true to the best of my knowledge, information and belief. The sources of my knowledge and information are statements by the master, officers and crew of the Pomaron. The reason why I make this verification is that the respondent is a foreign corporation none of whose officers is within the City of New York.

CHARLES C. BURLINGHAM.

Sworn to before me this 7th day of January, 1913.

[SEAL.] ROBINSON LEECH,
Notary Public, Kings County.

Certificate filed in New York County.

[Endorsed:] Answer filed January 8, 1913.

86 United States District Court, Southern District of New York.

At the January Term, in the Year One Thousand Nine Hundred and Thirteen.

Before the Honorable Judges of the District Court.

The libel of the United States of America against Furness, Withy & Company, Limited, in a cause of collision, civil and maritime, by its attorney, Henry A. Wise, United States Attorney for the Southern District of New York, alleges on information and belief as follows:

First. The libellant is a corporation sovereign.

Second. The respondent, Furness, Withy & Company, Limited, at all the times hereinafter mentioned, was and still is a corporation duly organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland, and for many years last past, has maintained a principal office for the transaction of business in the City, County and State of New York, in the Southern District of New York. It has also for many years maintained, owned and operated steamers for the carriage of freight from various ports in the United States to various ports in foreign countries.

Third. At all the times hereinafter mentioned, the Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft was the sole owner of the German steamship Alleghany and the respondent, Furness, Withy & Company, Limited, was the sole owner of the British steamship Pomaron. On or about January 31, 1912, the libellant delivered at the Port of New York to the steamship Alle-
87 ghany, and shipped in good order and condition thereon a large number of sacks of both registered mail and ordinary mail, the contents of the said sacks being destined to various ports in the Republic of Hayti and Colombia and in the Province of the Bahama Islands; the value of the contents of the said sacks was in the neighborhood of $50,000. The said steamship Alleghany proceeded from the Port of New York on or about the first day of February, 1912, bound to Inagua, the Island of Hayti and other West Indian ports.

Fourth. On or about the 2nd day of February, 1912, at about 11 A. M. while the said steamship Alleghany was bound on the voyage to the ports aforesaid, and at a point in the Atlantic Ocean about 90 miles east of Cape Henry, the said steamship Pomaron collided with the steamship Alleghany and caused such injury and damage to her that she afterwards sank and became a total loss, together with all her cargo, including the mail aforesaid. The libellant has no means of knowing precisely the circumstances of the collision aforesaid but it is informed and believes that the following are the circumstances thereof:

The Alleghany was proceeding on a course of approximately south and the Pomaron on a course of approximately east. The weather was clear, the wind was high, the sea was rough and both vessels were proceeding at full speed or nearly so.

The vessels were on crossing courses, the Alleghany, having the Pomaron on her own starboard hand; notwithstanding this situation the Alleghany starboarded her helm in an effort to cross the course of the Pomaron and neglected to stop and reverse
88 in sufficient time to avoid a collision. The Pomaron gave no signal of her approach until just before the collision when she blew two whistles, but she did not slacken or reverse her speed in sufficient time to prevent a collision. The result was that the Pomaron collided with the Alleghany, striking her on the starboard side at about a right angle between hatches 3 and 4, inflicting such injury that as a result thereof and at about 3.15 in the afternoon of the same day the Alleghany sank and became a total loss. The loss of the mail above referred to was not caused or contributed to by any fault on the part of the libellant but was caused or contributed to on the part of both steamers as follows:

(*a*) On the part of the Alleghany: (1) in that a good and sufficient lookout was not maintained, (2) In that she failed to keep out of the way of the Pomaron, (3) In that both vessels were approaching each other at right angles, or nearly so, involving risk of collision, and the Alleghany starboarded her helm and attempted to cross ahead of the Pomaron and failed to stop and reverse in sufficient time to avoid a collision, (4) In that the Alleghany failed to sound whistle signals indicating her manoeuvers immediately before the collision, and in sufficient time to avoid a collision, and in that she altogether omitted the reversing signals; and (5) In other respects to be shown at the trial.

(*b*) On the part of the Pomaron: (1) In that a good and sufficient lookout was not maintained; (2) In that the said steamer failed to hold her course and speed in approaching the Al-
89 leghany and failed to reverse sufficiently and in time to avoid a collision; (3) In that she changed her course and speed immediately prior to the collision, so that she struck the Alleghany on the starboard side, without indicating her manoeuvers with appropriate whistle signals; and (4) In other respects to be shown at the trial.

All and singular the premises of this libel are true and within the admiralty and maritime jurisdiction of this Court.

Wherefore the libellant prays that process in due form of law issue against the respondent with a clause of foreign attachment, citing it to appear and answer all and singular the matters aforesaid, and in case the respondent cannot be found within this District, that then its goods and chattels be attached to the amount sued for and that this Honorable Court may be pleased to decree the payment of the amount of the damages aforesaid with costs against the said respondent and that it may have such other and further relief as may be just and proper in the premises.

HENRY A. WISE,
United States Attorney for the Southern District of New York, Proctor for Libellant.

Office and Post Office Address, Room 50 U. S. Court House & P. O. Bldg., Borough of Manhattan, City of New York.

90 To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The answer of Furness, Withy & Company, Limited, to the libel of the United States of America, in a cause of collision, civil and maritime, alleges as follows:

First. The respondent admits the first article of the libel.

Second. The respondent admits the second article of the libel.

Third. The respondent admits that the German steamship Alleghany and the British steamship Pomaron were owned as alleged in the third article of the libel. Further answering the respondent denies any knowledge or information sufficient to form a belief as to the other allegations of the third article of the libel.

Fourth. The respondent admits that at about 11 A. M. on February 2nd, 1912, the Alleghany and Pomaron were in collision at a point in the Atlantic Ocean east of Cape Henry and that the Alleghany afterwards sank and became a total loss and further admits jurisdiction. Further answering the respondent denies that all and singular the premises of the libel are true and further denies each and every allegation of fault on the part of the Pomaron and further denies that the facts and circumstances of said collision are fully or accurately set forth in the fourth article of the libel and alleges that the true facts as to said collision are set forth in the fifth article of this answer.

91 Fifth. Further answering the respondent alleges as follows:

On February 1, 1912, the Pomaron, which is a steel screw steamship of 1,809 tons gross, 1,127 tons net, 278 feet long, 40.5 feet beam and 20.5 feet in depth of hold, left Baltimore bound for Leith laden with grain and general cargo. She passed Cape Henry between midnight and 1 A. M. on the 2nd, and set a course E. by N. ¼ N. magnetic, her compass course being E. by N., which course she maintained until just before the collision. The weather was fine and clear and the wind a moderate breeze from the west. The ship was making about nine knots an hour.

About 10:35 A. M. the first officer of the Pomaron, who was in charge of her navigation, sighted on the port bow a steamship, distant about ten miles, which was apparently steering a course about south. The bearing of this vessel, which proved to be the Alleghany, did not change as she approached but the Pomaron kept her course and speed until she saw that the Alleghany was doing nothing whatever to keep out of the way of the Pomaron. The first officer of the Pomaron, therefore, blew one blast of his whistle and at the same time ordered the helm a little to port. Shortly afterwards the Alleghany suddenly blew a signal of two blasts indicating that she was directing her course to port with the intention of crossing the Pomaron's bows. Seeing that a collision was inevitable, the officer of the Pomaron ordered the engines full speed astern and the helm put hard-a-port in an effort to ease the blow. The Alleghany kept on at full speed across the Pomaron's bows, at the last moment swinging apparently under a star-

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board helm, and the vessels came together, the Pomaron's
92 stem striking the Alleghany a glancing blow on her starboard side abaft the engine room. The way of the Pomaron was almost checked at the time of the collision, but the Alleghany was swinging rapidly to port and went on at full speed for some distance. The Pomaron stood by to render assistance and took all the crew and passengers on board when it was found that the Alleghany was sinking.

Sixth. By reason of the collision the Pomaron was seriously damaged, her bow and stem being twisted to starboard, her port anchor lost and many of her plates and frames broken.

Seventh. The collision was not caused or contributed to by any negligence on the part of the Pomaron or of those in charge, but was due solely to the negligence of the Alleghany in the following respects among others:

1. In that a good lookout was not maintained.
2. In that there was no officer or any competent person in charge of her navigation for some time prior to the collision.
3. In that although she had the Pomaron on her starboard hand she did not keep out of the way of the Pomaron.
4. In that she made no change of course until too late to avoid a collision.
5. In that she starboarded her helm, and attempted to cross the Pomaron's bows.
6. In that she did not port her helm or stop and reverse in time to avoid a collision.
7. In that she did nothing to avoid a collision.

All and singular the premises are true.

93 Wherefore the respondent prays that the libel herein may be dismissed, with costs.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Respondents.

SOUTHERN DISTRICT OF NEW YORK,
County of New York, ss:

Everett Masten, being duly sworn, says: I am a member of the firm of Burlingham, Montgomery & Beecher, proctors for the respondent herein. I have read the foregoing answer and the same is true to the best of my knowledge, information and belief. The sources of my knowledge and information are statements by the master, officers and crew of the Pomaron. The reason why I make this verification is that the respondent is a foreign corporation none of whose officers is within the City of New York.

EVERETT MASTEN.

Sworn to before me this 8th day of January, 1913.

[SEAL.] ROBINSON LEECH,
Notary Public, Kings County.

Certificate filed in New York County.

[Endorsed:] Answer filed Jan. 9, 1913.

LOSE IN CENTER

94 United States District Court, Southern District of New York.

YANG-TSZE INSURANCE ASSOCIATION, LTD., and HERBERT APPLETON and Douglas F. Cox, Attorneys in Fact for the Subscribers at the U. S. Lloyds, and the Indemnity Mutual Marine Assurance Co., Ltd., and Nord Deutsche Insurance Co., et al.,

against

FURNESS, WITHY & COMPANY, LIMITED, and HAMBURG-AMERIKANische Packetfahrt Actien-Gesellschatt, in a Cause of Collision, Civil and Maritime.

Before Hon. Learned Hand, Judge.

January 13, 1913.

Appearances:

Convers & Kirlin, Esquires (Mr. Kirlin and Mr. McGrann), for the Yang-tsze Insurance Association, Ltd., and Nord-Deutsche Insurance Company.

Burlingham, Montgomery & Beecher, Esquires (Mr. Burlingham, Mr. Leech and Mr. Wells, for the Pomaron.

95 Harrington, Bigham & Englar, Esquires (Mr. Harrington), for certain Cargo Claimants.

Kneeland, Harison & Hewitt, Esquires (Mr. Kneeland), for the Federal Insurance Company, the Sea Insurance Company and the London Assurance Corporation.

Henry A. Wise and A. S. Pratt, Esquires (Mr. Pratt), for the United States.

Wiliam Silsbe, Esquire (Mr. Cheyney), for the Boston Insurance Company.

Haight, Sandford & Smith, Esquires (Mr. Haight and Mr. Crowell), for the Alleghany.

Mr. Kirlin: The only claims before your Honor here are claims relating to the cargo of the Alleghany.

We prepared our libels without knowing all the facts and there are therefore some errors we wish to correct. If your Honor will look at the libel of the Yang-tsze Insurance Association, page 9, paragraph 11, in the third sentence we ask to strike out "through falling snow without sounding signals as required by Article 16 of the International Rules." That is an entire mistake.

Motion granted.

Mr. Kirlin: A little further down the page, in the sentence reading "the Pomaron after learning of the presence, * * * first gave a single short blast on her whistle without making corresponding change of helm," and so forth, we ask to strike out "without." It turned out that she did make a change.

96

Mr. Burlingham: We object to that being stricken out, because it will be argued that we did or did not do three or four different things,

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and we would like to have Mr. Kirlin's position stated so that we can tell what to answer in our argument.

Mr. Kirlin: Our position now is definite. It is that that should be changed.

The Court: I will not physically change it, but I will grant an order amending the present libel, which I understand is inconsistent with itself. I strike out the word "without."

Mr. Kirlin: On page 10 where we charge as a second fault the matter which has already been deleted by your Honor's order we ask that it be deleted.

Motion granted.

Mr. Kirlin: And in the third charge of fault we ask that "without" be deleted.

We also move to make the same changes in the libel of the Nord-Deutsche Insurance Company, which is identical in form with that of the Yang-tsze Insurance Association.

Motion granted.

Mr. Kneeland: We would like to make one change in the libel of the Federal Insurance Company. On page 8, Article 9, we have alleged that the magnetic course of the Pomaron was E. ¾ N. We computed the ¼ of a point deviation the wrong way. It should be E. by N. ¼ N.

Motion granted.

97 Mr. Kirlin: We offer in evidence in support of the claim of the Yang-tsze Insurance Association, Limited, referred to in paragraphs 5 and 12 of the libel of the Yang-tsze Insurance Association, Limited, et al., against Furness Withy & Company, Limited, certain bills of lading, invoices and assignment of Huttlinger & Struller, fastened together, and marked "Libellants' Exhibit 1"; also certain bills of lading, invoices and assignment of Central Railroad of Haiti, fastened together, and marked "Libellants' Exhibit 2."

We offer in evidence in support of the claim of Herbert Appleton and Douglas F. Cox, attorneys in fact for individual underwriters, subscribers at United States Lloyds, referred to in paragraphs 6 to 9 inclusive, and paragraph 13 of the said libel, certain bills of lading, invoices and assignments of Cohen & Company, fastened together, and marked "Libellants' Exhibit 3"; also certain bills of lading, invoices and assignment of Huttlinger & Struller, fastened together, and marked "Libellants' Exhibit 4"; also certain bills of lading, invoices and assignment of the Kny-Scheerer Company, fastened together, and marked "Libellants' Exhibit 5"; also certain bills of lading, invoices and assignment of M. C. D. Borden & Sons, fastened together and marked "Libellants' Exhibit 6"; also certain bills of lading, invoices and assignment of The Carter's Ink Company, fastened together and marked "Libellants' Exhibit 7."

98 We offer in evidence in support of the claim of The Indemnity Mutual Marine Assurance Company, Limited, referred to in paragraphs 10 and 14 of the said libel, and in the order amending the said libel, certain bills of lading, invoices and assignment of Vacuum Oil Company, fastened together and marked "Libellants' Exhibit 8"; also certain bills of lading, invoices

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and assignment of Achille Starace, fastened together and marked "Libellants' Exhibit 9."

We offer in evidence in support of the claim of Nord-Deutsche Insurance Company, referred to in paragraphs 8 and 15 of the libel of Nord-Deutsche Insurance Company, et al., against Furness, Withy & Company, Limited, and in the order amending said libel, certain bills of lading, invoices and assignment of Armour & Company, fastened together and marked "Libellants' Exhibit 1"; also certain bills of lading, invoices and assignment of Morris & Company, fastened together and marked "Libellants' Exhibit 2."

We offer in evidence in support of the claim of Union Insurance Society of Canton, Limited, referred to in paragraphs 9 and 16 of the said libel, certain bills of lading, invoices and assignment of Purgold & Company, fastened together and marked "Libellants' Exhibit 3."

We offer in evidence in support of the claim of Commercial Union Assurance Company, Limited, referred to in paragraphs 10 and 17 of the said libel, certain bills of lading, invoices and as-
99 signment of Daniel Miller Company, fastened together and marked "Libellants' Exhibit 4."

We offer in evidence in support of the claim of The Corporation of Lloyds, referred to in paragraphs 11 and 18 of the said libel, certain bills of lading, invoices and assignment of Roberto Vargas, fastened together and marked "Libellants' Exhibit 5."

We offer in evidence in support of the claim of Ætna Insurance Company, referred to in paragraphs 12, 13 and 19 of the said libel, certain bills of lading, invoices and assignment of the Autopiano Company, fastened together and marked "Libellants' Exhibit 6"; also certain bills of lading, invoices and assignment of Lyon Company, fastened together and marked "Libellants' Exhibit 7."

Mr. Kneeland: On behalf of the Federal Insurance Company et al. against Furness, Withy & Company, Limited, we offer in evidence the following exhibits:

Exhibit 1, bills of lading and invoices for nineteen shipments of merchandise by G. Amsinck & Company and assignment from G. Amsinck & Company to Federal Insurance Company.

Exhibit 2, bills of lading and invoices for four shipments of merchandise by J. A. Pauli & Company and assignment from J. A. Pauli & Company to Federal Insurance Company.

Exhibit 3, bill of lading and invoice of a shipment of merchandise by Yglesias Lobo & Company and assignment from
100 Yglesias Lobo & Company to Federal Insurance Company.

Exhibit 4, bill of lading and invoice of shipment of merchandise by Singer Sewing Machine Company and assignment from Singer Sewing Machine Company to Federal Insurance Company.

Exhibit 5, bills of lading and way bill for shipment of merchandise by A. Fauconnet for account of Achille Starace and assignment from Achille Starace to Federal Insurance Company.

Exhibit 6, bills of lading and invoice for shipment of merchandise by C. H. Pattengill and original certificate of insurance duly endorsed.

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On behalf of the Sea Insurance Company, Limited, we offer in evidence the following exhibits:

Exhibit 7, bill of lading and invoice for a shipment of merchandise by George Lueders & Company and assignment from George Lueders & Company to Sea Insurance Company, Limited.

Exhibit 8, registered mail receipts, letter from Assistant Postmaster, New York City, and invoice for two registered mail packages sent by Isaac Brandon & Brothers, and assignment from Isaac Brandon & Brothers to Sea Insurance Company, Limited.

Exhibit 9, bill of lading and six invoices for shipment of merchandise by United Steel Products Company and assignment from United Steel Products Company to Sea Insurance Company, Limited.

On behalf of the London Assurance Corporation we offer
101 in evidence the following exhibits:

Exhibit 10, bills of lading and invoices for two shipments of merchandise by O. C. Kanzow & Company, and assignment from O. C. Kanzow & Company to London Assurance Corporation.

Exhibit 11, bill of lading and invoice for shipment of merchandise on steamship Cedric by James Gibson & Company, letter from Hamburg-American Line advising of transshipment of same on Alleghany, and assignment from James Gibson & Company to London Assurance Corporation.

Exhibit 12, bill of lading and invoice for shipment of merchandise on steamship Leurentic, by F. Farah, letter from Hamburg-American Line advising of trans-shipment of same on Alleghany, and assignment from F. Farah to London Assurance Corporation.

Mr. Haight: The Alleghany was bound south and the Pomaron was bound east out of Norfolk, they were going approximately at right angles and collided about mid-day at sea. The chief officer of the Alleghany was one of the best men the Hamburg Line ever had and he thought he was actually at sea with nobody within a thousand miles of him. The Pomaron struck us a little aft of amidships on the starboard side, and did so much damage that in a few hours the Alleghany went down to the bottom with everything she had on board. The crew were saved. We filed a petition for limitation of liability and we offer here the petition for limitation of
liability and the depositions that have been taken to show
102 there was no privity on behalf of the Hamburg Line and that nobody is claiming more than the freight.

Mr. Crowell: In the limitation of liability case we offer two depositions, with an exhibit. Our freight has been surrendered and the amount fixed. The claims for the cargo have been filed with Mr. Gilchrist and the only question now is whether we are entitled to a decree.

Mr. Kneeland: We have filed no claim in that proceeding.

Mr. Harrington: We understand that it is agreed that the several libellants for whom we are acting had cargo on the Alleghany and that it was lost as a result of this collision with the steamship Pomaron. That the formal proofs, the bills of lading and other docu-

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mentary proof, and the extent thereof, are waived at this time, to be produced on a reference herein, if any.

Mr. Burlingham: We agree to that.

Mr. Cheyney: We agree to that.

Mr. Kirlin: Mr. Pratt has a claim for registered mail that was lost and we presume that Mr. Burlingham will make the same stipulation with reference to the claim of the United States as he has made with the other counsel.

Mr. Burlingham: We make the same stipulation.

Mr. Kirlin: We offer in evidence the entire cross-examination (pp. 45 to near bottom of 66) of William A. Westgarth, late chief officer of the Pomaron, taken at Newport News, Virginia,
103 June 7, 1912. Also the recross-examination beginning on page 69 and extending to the top of page 75.

We ask Mr. Burlingham to prove the original log of the Pomaron.

Mr. Burlingham: We produce the log.

It is marked Exhibit 10, January 13, 1913.

Mr. Kirlin: We also offer in evidence from the testimony of John Hyslop, the wheelman, taken at the same time and place as that of the chief officer, the entry of Friday, February 2, 1912, pages 41 to 43.

Mr. Kirlin: We call upon counsel to produce the original engineer's log.

Mr. Burlingham: We produce it.

Mr. Kirlin: We offer in evidence from the engineer's log of February 2, subject to comparison, a copy of the document as it appears after page 82 in the deposition of Charles Johnson, chief engineer of the Pomaron.

It is marked Exhibit 11, January 13, 1913.

Mr. Kirlin: Have you produced the scraplog which we asked for?

Mr. Burlingham: The chief officer said it disappeared when the crew of the Alleghany left.

Mr. Kirlin: Have you produced, in response to our call, the report made by the master of the Pomaron to the British Board of Trade?

Mr. Burlingham: We produce a copy of it.

The report is offered in evidence. It is marked Exhibit 12, January 13, 1913.

The report of the chief officer is offered in evidence. It
104 is marked Exhibit 12*a*, January 13, 1913.

Mr. Kirlin: Under stipulation dated January 8, 1913, providing that any party may introduce in evidence such portion of the log-book as he may wish, we offer in evidence from this exhibit the statement of the course of the Alleghany, as follows:

South 2 degrees west, true; and the distance that she made in the four hours preceding—from 4 to 8—46 miles, showing her speed. That is the last complete four hours of which there is any record.

We offer in evidence the sheet on which that information is contained.

It is marked Exhibit 13, January 13, 1913.

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MARTIN G. KINDLUND, being duly sworn and examined as a witness for the cargo claimants, testifies:

By Mr. Harrington:

Q. What is your profession?
A. Marine architect.
Q. How long have you been engaged in that profession?
A. About one year.
Q. Where were you educated?
A. Webbs Academy of Naval Architecture and Marine Engineering.
Q. What experience have you had in a practical way since your graduation?
A. I have been chief draughtsman of the Staten Island Ship Building Company for four years. I have been employed in various shipyards in this country and in Europe. I have been assistant to Mr. George B.——
105 Q. You are now in private practice?
A. Yes, I am now in private practice.

By the Court:

Q. How old are you?
A. I am thirty-two.

By Mr. Harrington:

Q. At my request have you made some calculations and a diagram with respect to the collision between the Alleghany and the Pomaron on February 2, 1912, based on various hypothesis submitted to you by me?
A. Yes.
Q. Assuming, if you please, the steamers Alleghany and Pomaron coming into collision on February 2, 1912, in latitude 37 degrees 32 minutes north, longitude 74 degrees west, in the North Atlantic off the Virginia coast. The Alleghany was bound from New York to Haiti. The Pomaron was bound from Baltimore to Leith. The collision occurred in broad daylight, shortly after 11 o'clock in the morning. The Alleghany's course was south four degrees west magnetic. The Pomaron's course was east by north, which with a correction for the variation gave a course east by north, ¼ north magnetic. The Alleghanys' speed was 11½ knots; the Pomaron's speed was 9 knots. The testimony of the Pomaron is as follows: When the steamers were at a distance, variously estimated, the compass bearing of the Alleghany was taken and found to be northeast. Presumably, the same correction should be made here as above, which would give a bearing of northeast ¼ north magnetic. At some time after the taking this compass bearing the Pomaron's helm was ported slightly and remained ported for about one min-
106 ute, during which time her heading was changed about one point. Her engines were then reversed at full speed and her helm put hard-a-port which maneuver was continued until the collision, four minutes later. At the time of the collision the Pomaron

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had been brought to a heading of east southeast. In the meanwhile the Alleghany had starboarded her helm very shortly after the helm of the Pomaron was ported, and at the time of the collision the Alleghany had reached a heading of about southeast by south. For the purposes of this problem, the Alleghany's helm may be taken to have been put hard to starboard, at the same time the Pomaron's helm was put hard to port. The Pomaron's chief officer, who was in charge of her navigation estimates that her speed from the time she put her engines full speed astern until the collision was as follows: the first minute the reduction in her speed would be negligible; at the end of the second minute she would be going 7 knots; at the end of the third minute, 4½ knots; at the end of the fourth minute, about 2 knots. So that her speed at the time of the collision had been reduced to, say, 2 knots. No change was made in the speed of the Alleghany. With those questions before you, have you made a diagram of your calculations and the results?

A. Yes, I have one here.

Q. Upon the hypotheses I have incorporated in the foregoing question I ask you, first, assume that the Alleghany was seen from the Pomaron at a bearing of northeast at any time before either vessel had changed its course or speed, was there any possibility of collision if each vessel held her course and speed?

A. No, sir.

Q. If on those respective courses the Pomaron had at any
107 time sighted the Alleghany at a bearing of northeast, what would have happened if each vessel held her course and speed?

A. The Alleghany would have crossed the Pomaron's bows.

By the Court:

Q. How far off?

A. The length of the Alleghany's course is shorter than that of the Pomaron's, and the speed of the Alleghany is more than that of the Pomaron, there is no question about it at all.

Q. How far off?

A. I haven't figured that out.

Q. You can find out?

A. I can find out, yes, sir. I haven't found that out, I can find it quite easily. It is so evident that she would have cleared by a very wide margin I didn't trouble to find that out; it would be a very wide margin.

By Mr. Harrington:

Q. Would you venture an approximation, when you say "a very wide margin"?

A. No.

Q. The second question I wish to put to you is, working backward from the point of collision on the data I gave you in the long question we wish to fix the point at which the Pomaron was when she made her first change of course and to ascertain whether at such

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point there was any danger of collision in case each vessel held her course and speed. Have you made such a calculation?

A. I have.

The Court: Do you mean after she began to port, if she had kept on? He has already answered that if she held her course there would be no collision.

Mr. Harrington: The first question is based on the north-
108 east bearing. That is distinctly set down in the log-book, and if there ever were such a bearing there could be no collision, all counsel must agree to that. However, they are repudiating that entry in the log, which we will urge they have to stand by and they are now giving us something else. We say, very well, we will take it and show that the collision would not have happened if she had held her course and speed.

The second position is this: we have no bearing—we can calculate that most certainly because they have taken away the northeast.

We have the course of the Pomaron——

Mr. Burlingham: Let the gentleman put the question. The witness should not be instructed, but should be examined.

Mr. Harrington: They have given us the point of collision. He has given the distance he went in the last minute before the collision, the minute before that and before that, and finally he is near his original course. Now, I take him back another minute.

The Court: I understand now.

Q. Referring to your diagram, will you explain how you worked back from the point of collision and arrived at the precise point on her original course the Pomaron was on at the time she ported her helm?

A. Working back from that time, it has been testified that the speed of the Pomaron at that moment was 2 knots; one minute before that the speed was 4½ knots; two minutes before the collision,
7 knots; three minutes before the collision, 9 knots; four
109 minutes, 9 knots, and so on back. Using the average speeds for the intervals of the various minutes I have plotted a curve showing the position of the Pomaron at those times, and I have taken a certain path that the steamer would naturally follow with the helm ported, and I find that four minutes from the time of the collision the Pomaron was where it is shown, and that is the time when the helm was put hard to port. Five minutes before the collision occurred the Pomaron was on her course and it was then the chief officer testifies that the first change was made. I have taken the course of the Pomaron, the original course, as E. by N. ¼ N. I have taken the position of the Pomaron at the time of the collision to be E. S. E., and those of course give two very definite positions. I have also taken into account the fact that between the four and five minutes back from the time of the collision the ship changed her course one point. From the fourth minute back until the collision occurred I have made a gradual change in the ship's course and the propeller was backing, and of course the speed became less, and the various positions of the ship are shown on this diagram.

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In doing this I have attempted to give the exact position of the Pomaron five minutes before the collision occurred with reference to the course of the Alleghany. That was my intention.

Q. The position you have given the Pomaron at the four minutes before the collision point, was that taken as the time when she began to hard-a-port?

A. Yes, it was.

Q. She had then made a change of one point in her heading from your original course?

A. Yes, sir.

110 Q. And as you have given the vessels in collision you have given the heading of the Pomaron as I gave it in the question?

A. Yes.

Q. So between the four minutes and the collision positions you have drawn a gradual curve as you calculated it would be between those two definite fixed headings?

A. Yes, sir.

Q. Taking the Pomaron in the position marked "5 m.," the last on her original course, how have you fixed the position of the Alleghany with reference to the Pomaron at that time?

A. I have assumed, which is also correct, that the Alleghany did not change her speed throughout her course, that she maintained 11½ knots as her speed. I have assumed that she started to change her course at the same time the Pomaron did and working from that data, or using it, I have worked back from the position of the Alleghany at the collision, which was S. E. by S., worked back to four minutes previous to the collision. Then from that point I have drawn the course of the Alleghany, which was S. 4 degrees W.

The Court: Her turning course might be different.

The Witness: You see the note I have put on there, that curve I have shown there—I call it "Q"—represents the path of the Alleghany with the helm starboarded four minutes before the collision, and turning at a gradual increasing rate—which I do not know exactly——

By the Court:

Q. You mean assuming her helm after one minute was starboarded and kept where it was then?

A. Yes, sir.

111 By Mr. Harrington:

Q. In figuring that curve did you take into account the exact heading of the Alleghany at the time of the collision as given in the long question?

A. Oh, yes.

Q. And her exact heading before she made any change at all?

A. Yes.

Q. So that in figuring that curve you took into account a fixed

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heading before the curve started and a fixed heading at the end of the curve and made the curve as gradual as you could in between?

A. Yes.

Q. Referring to your diagram, to the position in which you put the Allegheny five minutes before the collision, I notice a broken line running across from that position to the position of the Pomaron at the five minutes before the collision?

A. Yes.

Q. What is the distance across there?

A. It measures about 5,950 feet.

Q. Just about a mile?

A. Very close to one mile.

By the Court:

Q. What would happen if each kept its course?

A. If each kept its course the Pomaron would have reached the line of the course of the Alleghany at a certain time which I have called 2 minutes and 27 seconds before the collision actually occurred. I reckon my time from the moment the collision occurred. At that moment, 2 minutes and 27 seconds before the collission occurred, the Alleghany would have been 1,600 feet from the point of intersection of the two courses, showing that the Pomaron would have crossed the Alleghany's bows, 1,600 feet away.

112 Q. A quarter of a mile?

A. Over that.

Q. And taking the position that you have marked "5 m." of the Pomaron on your diagram, at which time as I understand it the Alleghany would have been at the point marked "5 m." on the Alleghany's course, what would have been the bearing of the Alleghany on the port bow of the Pomaron when a mile away?

A. The actual bearing would be N. N. E. ½ E.

Q. How many points?

A. Four and one-quarter points.

Q. Are you sure it is ¼?

A. Four and one-quarter points.

Q. So that in those relative positions if the Pomaron and Alleghany had each held her course and speed the Pomaron would have reached the point of intersection of their courses, protracted, at a time when the Alleghany was 1,600 feet away?

A. Yes.

Q. And away on the port side?

A. Yes.

Cross-examined by counsel for the Pomaron.

By Mr. Burlingham:

Q. Have you assumed there was no change of bearing of the Alleghany?

A. I have assumed that she changed her bearing during the four minutes before the collision occurred, apparently.

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Q. How about the previous time as it appears on this diagram?
A. Previous to that I have taken a course S. 4 degrees W.
Q. Where do you put her first in view on this diagram, the Alleghany, according to your diagram when does she first come in view? Specify the place on the diagram.
A. I have marked it "6 m.," which means 6 minutes before the collision occurred.

113 Q. Is there any change of bearing at 5 minutes?
A. No.
Q. None?
A. None.
Q. What do you say the bearing was at 6 minutes?
A. As far as the Pomaron is concerned there would be a very slight change.
Q. What is the bearing at 6 minutes?
A. At 6 minutes? I have not got it here, I can figure it out.
Q. How many points?
A. You can see.
Q. I want you to tell me how many points?
A. I can figure that out.
Q. You have never been a navigator?
A. I have only marked the actual bearing for the position marked "5 m."
Q. All I ask is, at the position which is marked "6 m." how did the Alleghany bear from the Pomaron, how many points on her port bow?
A. Very close to 4¼.
Q. Give it in degrees.
A. Forty-two degrees. About 47 degrees.
Q. Forty-seven or 42?
A. Forty-seven at the position "6 m."
Q. Take the next minute, "5 m." What is the bearing there of the Alleghany?
A. At "5 m.," 49 degrees.
Q. Are you sure you are right about that? Look at it carefully.
A. Forty-nine degrees; slightly greater than at "6 m."
Q. Then she was widening, was she?
A. She was widening.
Q. Are you able to tell what the bearing of the Alleghany was from the Pomaron at the point marked "7 m."?
A. At "7 m." about 46 degrees.

114 Q. What courses have you taken? I see them marked here "E. by N. ¼ N." Is that compass or magnetic course?
A. Magnetic course.
Q. What have you done about the Alleghany?
A. The course was S. 4 degrees W. magnetic.
Q. What is that at the lower part of the diagram, "Pomaron E. S. E.," what is that?
A. That was the bearing of the Pomaron.
Q. No, it is not the bearing.
A. The course of the Pomaron at the time of collision.

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Q. Was it magnetic?
A. I believe it was.
Q. Don't you know?
A. It was stated in that statement and I assumed that it was.
Q. Do you assume the same magnetic courses all the way through?
A. Yes, sir, certainly.
Q. It is important to know whether E. S. E. is magnetic or not?
A. Well, it is.
Q. It is not, as a matter of fact. It is the compass course. The truth is it is E. S. E. ¼ S. Doesn't that spoil your diagram?
A. To an extent.
Q. Only a little?
A. Very, very slightly.
Q. How about the Alleghany's course marked "S. E. by S."; is that magnetic?
A. That is magnetic, I have taken it to be so.
Q. You arrived at that course by putting the two boats at an angle of 45 degrees?
A. No. I have taken those courses from the statement that was provided me.
Q. We had no statement. You had no statement of the course of the Alleghany at the collision?
A. Yes, sir. It was testified to, I believe.

Mr. Harrington: I gave it to him.

Q. It has not been testified to at all. All we know from the testimony is that course of the Pomaron and the angle of collision was 45 degrees. If you have the course of the Pomaron wrong, how do you know the course of the Alleghany?
115
A. I have taken that from what was given me.
Q. Who gave it to you?
A. Mr. Harrington.

Mr. Harrington: I gave it to him in the hypothetical question.

Q. If the course of the Alleghany was not S. E. by S., but was S. E. by S. ¼ S. wouldn't that injure the diagram's accuracy also?
A. Slightly.
Q. When you put the original position of the Alleghany down at a distance of about a mile, 5,960 feet, did you attempt to place her at a position precisely N. E. of the Pomaron?
A. No.
Q. What did you try to do?
A. I didn't attempt to place her in any position relative to the Pomaron in the position of the Alleghany marked "5 m."
Q. At "6 m." I say?
A. "Six m." is obtained entirely by working back to the point of collision, to the point of time of the collision.
Q. You started at the point where they are in collision?
A. At "0 m."
Q. If that is wrong, perhaps the rest is wrong?

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A. The angle between the two courses at the time of collision is about 35 degrees, about three points.

Q. Have you made such drawings as these before? Is this your first effort or are they frequent?

A. What do you mean?

Q. To make a diagram of a collision from data furnished; did you ever do it before?

A. No, I can't say that I have just that way.

Q. Don't you regard it as of considerable importance to know whether courses are magnetic or compass courses?

A. Certainly.

116 Q. You would prefer to have that fact made clear to you before you began your work?

A. I took them to be so.

Q. I tell you according to the testimony in this case, undisputed testimony, there was no change at all in the bearing of the Alleghany from the Pomaron prior to the change of course by the Pomaron. Does that make any difference to you in your confidence in the accuracy of your diagram?

Mr. Harrington: That is not undisputed.

A. If that is actually so, it might make a little difference in the accuracy of the diagram; but I do not know that to be true.

By the Court:

Q. Tell me the bearing of the Alleghany from the Pomaron, first, at the point indicated as "4 m." for each vessel; and, second, at the place which you marked "4 m." as her position.

A. Do you wish it in degrees or points?

Q. I would like you to give it in degrees.

A. From the curved course, 69 degrees. The straight course assumed, 53 degrees. Joining the curved courses 4 and 5, do you wish?

Q. I want the bearing of the two ships changed as they continued on their courses.

A. I wish to correct that to 64 degrees.

Q. When the Pomaron was here, how far off her port bow was this boat there?

A. Sixty-four degrees.

Q. If she had kept her course how far off her port bow would she have been? If she had not changed her course how far at the fourth minute would she have been off her bow? How much

117 would she have changed her bearing?

A. Fifty-two degrees.

By Mr. Burlingham:

Q. If you were told and believed that the Alleghany bore from the Pomaron about N. E. and continued to bear from her about N. E. as they approached each other, would this diagram throw any light on the situation as it is drawn?

A. No, sir.

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Q. You have to assume, and did assume, that the bearing was constantly changing?

A. Yes, sir.

Q. Not that it was constant and unchanging?

A. Yes.

Q. You are satisfied yourself by this diagram, and in no other way, I suppose, that there was no possibility of collision between the two vessels if they had kept their respective courses?

A. By this diagram.

Q. You are not a navigator of course?

A. No, sir.

Q. You don't know all the rules of the road or the duties of ships?

A. No.

Q. You don't attempt to pass on that?

A. I don't claim to be an expert on those points.

Q. On what did you base this assumption that the Alleghany changed her course at the precise moment that the Pomaron changed hers?

A. Why, I took that from the statement which was provided me in working out this problem.

Q. Is that involved in the hypothetical question?

A. Yes, sir.

Q. Let me ask you this: On the assumptions on which you base this diagram, would you say that if the Alleghany had kept
118 her course instead of starboarding there would have been no collision, assuming the Pomaron made the change indicated on this curve?

A. I say that.

Q. How would she avoid the Pomaron then, going astern of her?

A. If the Alleghany had kept on her course and at her speed.

Q. Do you mean to say that if the Pomaron had changed her course as you have indicated on the diagram and the Alleghany had made no change, there would have been no collision? What would have happened?

A. The Pomaron would have crossed the Alleghany's bow.

Q. By a wide margin, as you said to his Honor?

A. Yes, sir, by a wide margin.

Q. Not so wide, I suppose, as by starboarding?

A. (After figuring) By about 800 feet, judging, without going into it very accurately; very close to 800 feet; the Pomaron would have been beyond the course of the Alleghany.

Q. She would have gone 800 feet under the stern of the Pomaron?

A. Yes, sir.

Q. I thought you said she would have crossed her bow?

A. The Alleghany would? Oh, no; the Pomaron would have passed across the bow of the Alleghany 800 feet approximately.

Q. If the Alleghany had starboarded of course there would have been no collision, would there?

A. She did starboard, because the collision followed.

Q. I meant if she had ported?

OSE IN CENTER

A. No, of course not.

Q. Aren't you wrong in fixing that estimate of 800 feet? How did you work it out?

A. On the diagram you will see a dotted line following out the original course of the Alleghany S. 3 degrees W. Down near
119 the point of meeting of the two courses I have marked there "1 m.," that means that the Alleghany, had she continued her course, would have been at that position one minute before the actual time of collision, whatever that might be.

Q. And as I look at the diagram I find the "1 m." point for the course of the Pomaron way off to the eastward, so it looks to me as if it was a good deal more than 800 feet. How can you say it is 800 feet?

A. That distance is on the scale very close to 800 feet.

Q. What distance?

A. The distance from the course of the Alleghany to the position of the Pomaron, when the Alleghany would have crossed the course of the Pomaron on that curved course.

Q. Yes; but when the Alleghany's course you have marked straight had crossed the course of the Pomaron the Pomaron would not still be at "1 m.," she would be still further, wouldn't she?

A. She would be at the point marked "1 m."

Q. When?

A. When the Alleghany was at the position also marked "1m."

Q. But their courses are not crossing then. I want the intersection of their courses on your assumption.

A. The intersection of the courses on my assumption?

Q. The intersection of the courses on your assumption that the Alleghany was keeping her course and speed and the Pomaron doing exactly what she did.

A. Exactly that would have occurred about one-half a minute before the collision actually occurred, using that as a time to reckon from, whatever that time is; therefore if you take the position
120 of the Pomaron midway between "0 m." and "1 m.," which is one-half, that will coincide very closely to the position of the Alleghany when the course of the Alleghany crossed the course of the Pomaron, and we can measure that; it looks to be 500 feet.

Q. It looks to me, roughly 1,200 feet.

A. I said 800 feet approximately.

By the Court:

Q. Mr. Burlingham has asked you, first, to project the straight line on the course of the Alleghany until it intersects the curved line.

A. Yes, your Honor.

Q. Just project it.

A. That is projected down here.

Q. You have marked it with an "X"?

A. I have marked it with an "X."

Q. The Pomaron crossed that point at about 2¼ minutes before the collision, did she not?

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A. The Pomaron crossed that point about 2¼ or 2 1-3 minutes before, yes, sir.

Q. If the Alleghany had not changed her course, which she did, she would be therefore about 2¼ minutes up that line?

A. Exactly.

Q. Which would be in that position?

A. Yes, sir.

Q. Is that 800 feet?

A. No, sir, that is not 800 feet. This is 800 feet here.

Q. It is not how far under the stern of the Pomaron she would have passed, but how far off the bows of the Alleghany the Pomaron would have passed.

A. That would be very close to 1,300 feet.

Q. It makes a good deal of difference whether you want to know how far under the stern of the Pomaron she would have
121 passed, or how far off the bows of the Alleghany the Pomaron would have passed?

A. I took the question to mean how far beyond the course of the Alleghany would the Pomaron be at the time when the Alleghany crossed the Pomaron's course.

By Mr. Burlingham:

Q. What is your answer?

A. Thirteen hundred feet. One minute, please. I wish to revise that by the scale. It would be very much more. I will state it two ways: When the Pomaron crossed the course of the Alleghany the Alleghany would be about 2,200 feet from that point, from the point of the intersection of the two courses. Now, one other way.

By the Court:

Q. And under the stern 800 feet?

A. About 1,000; the Pomaron would be about 1,000 feet beyond the course of the Alleghany.

By Mr. Burlingham:

Q. Then it was the starboarding of the Alleghany that brought about the collision, was it?

A. Yes, sir.

Redirect examined by counsel for cargo claimants.

By Mr. Harrington:

Q. In figuring the position of the Alleghany at the point marked "6 m." on her course, did you take into account the hypothesis given you in the main question, that the Alleghany had starboarded
122 at about the same time that the Uomaron had ported?

A. Yes.

Q. And if you had not taken that into account, of you had tried to work back from the point of collision without any starboarding by the Alleghany, would the Alleghany be as far up on this course as she is here shown to be?

OSE IN CENTER

A. No. Pardon me. Further up the course, yes, further up the course—the difference between her curved course and the straight line.

Q. So she would have been further up the course?

A. She would have been further up the course.

Q. And the bearing given in the positions "5 m." would not have been in the hypothetical question?

A. No.

Q. Counsel for the Pomaron asked you, Was the collision caused by the starboarding of the Alleghany. What did you say to that?

The Court: He said it was.

Q. You said it was; what do you mean by that?

A. If the Alleghany had continued on her course and the Pomaron had changed her course as per diagram.

Recross by counsel for the Pomaron.

By Mr. Burlingham:

Q. You think you have demonstrated by this diagram that if both vessels had continued their course and speed there would have been no collision?

A. Yes.

Q. How much clearing space would there have been between them?

123 A. If each maintained its original course and speed at the time when the Pomaron would have crossed the course of the Alleghany there would have been 1,600 feet between them; when the Pomaron crossed the bows of the Alleghany it would have crossed by 1,600 feet.

Q. I thought you said the Alleghany was to cross the Pomaron's bow; that if both vessels maintained their respective courses and speed the Alleghany would have crossed the Pomaron's bow?

A. Assuming there was a N. E. bearing between the two vessels. But I did not assume that in this diagram, I threw that aside as uncertain.

Q. You maintain, do you, that this diagram proves that if the Pomaron and Alleghany had each maintained its course and speed the Pomaron would have crossed the bows of the Alleghany with a clearance of 1,600 feet?

A. Yes.

Mr. Kirlin: That is assuming the five points bearing.

Mr. Harrington: We must all agree to that if it was N. E.

The Witness: There was an uncertainty as to the N. E. bearing.

By the Court:

Q. If you assume the vessels were on the courses indicated and at any time bore northeast from each other, having their respective speeds also indicated, in that case your conclusion is that the Alleghany necessarily would have passed the bows of the Pomaron about 1,600 feet away?

COPY BOUND CLO

A. No, sir.
Q. That is not your conclusion?
A. No, sir, that is not my conclusion.
Q. Are there enough data without that to indicate how
124 she would pass and how far off?
A. No in this diagram. But I can very easily do it.
Q. You haven't done it?
A. No, sir.
Q. On the other hand, you do assume, reckoning back from the point of collision the respective places of the different moments, that had each vessel kept its place the Pomaron would have crossed the bows of the Alleghany about 1,600 feet off?
A. Yes, sir.

The diagram is offered in evidence. It is marked Exhibit 14, January 13, 1913.

Recross by counsel for libellants.

By Mr. Kirlin:

Q. Your diagram is based entirely on the hypothetical question?
A. Yes, sir.
Q. You have been told to diagram a situation?
A. Yes, sir.
Q. Based on a possible bearing of the Alleghany of five points on the port bow of the Pomaron?
A. That is not the way I put it, no, no.
Q. What bearing have you assumed?
A. I have assumed no bearing. I have merely worked back from the point of collision and so I have located the positions of the two vessels at various moments or minutes of time before the collision occurred.

By the Court:

Q. You base your diagram on the fact that two vessels at different points of time meet in collision on courses at that instant three points apart; you have the means of ascertaining at one, two, three, four, five and six minutes theretofore the positions on
125 the courses that the two vessels occupied. You have also, to a certain extent, the means of indicating how they were changing their courses. That is all?
A. That is all.
Q. Now, I want to know how you ascertain the character of the curve which these two vessels—the courses which these two vessels were on prior to the collision. A great deal depends on the character of the curve?
A. The path of the Alleghany when changing her course four minutes preceding the collision?
Q. You ascertained each curve by pre-supposing that the Pomaron first changed her course five minutes prior to the collision and the Alleghany four minutes before it?
A. Yes.

LOSE IN CENTER

Q. And you took those as data in each case?
A. Yes, sir.
Q. Those are the only data which you took to draw the diagram. Is that correct?
A. That is correct.
Q. That is the entire basis?
A. That is the entire basis.

Mr. Kneeland: There is a little more than that. The first officer of the vessel has testified how fast the vessels would run.

The witness: I have taken the speeds as given.

Mr. Kirlin: We offer in evidence a stipulation between the parties dated January 6, 1913, in relation to agreeing that certain statements set forth in the stipulation be received as testimony of the master and chief officer of the Alleghany.

126 The stipulation is marked Exhibit 14*a*, January 13, 1913.

Mr. Kirlin: We rest.

Mr. Burlingham: We offer in evidence the remainder of the depositions taken on June 7, [illegible] six in number, enclosed in a book of 110 pages.

The direct examinati[illegible]d redirect of the officers in charge of the Pomaron are [illegible]urt by the respective counsel.

Mr. Burlingha[illegible]n evidence a stipulation between counsel dated Ja[illegible]15.

It is marked E[illegible]t 15, January 13, 1913.

An extract fro[illegible] a translation of the log of the Alleghany is offered in evidence, together with a stipulation dated January 8, 1913.

They are marked Respondents' Exhibit A, January 13, 1913.

It is stipulated that the value of the ship is $70,500.

127 United States District Court, Southern District of New York

HAMBURG-AMERICAN LINE, Libellant,
against
FURNESS, WITHY & COMPANY, Limited, Respondent.

YANG-TSZE INSURANCE ASSOCIATION, Limited, and others,
against
FURNESS, WITHY & COMPANY, Limited, and HAMBURG-AMERIKANISCHE PACKETFAHRT ACTIEN-GESELLSCHAFT.

Depositions of witnesses for the respondent Furness, Withy & Company, Limited, taken pursuant to notice by consent, at the Warwick Hotel, Newport News, Virginia, on June 7th, 1912.

Appearances:
Messrs. Burlingham, Montgomery & Beecher (Mr. Burlingham and Mr. Leech and Mr. Floyd Hughes), for the Respondent, Furness, Withy & Company, Limited.

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Messrs. Haight, Sandford & Smith (Mr. Smith) for the Hamburg-American Line.

Messrs. Convers & Kirlin (Mr. Kirlin), for the Yang-tsze Insurance Association, Ltd.

128 Messrs. Kneeland, Harison & Hewitt (Mr. Kneeland), for the Federal Insurance Company, and others.

Messrs. Harrington, Bigham & Englar (Mr. Harrington), for the British & Foreign Marine Insurance Company.

Addison S. Pratt, Esq., for the United States District Attorney for the District of New York.

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived; stenographer's fees to be a taxable disbursement.

It is further stipulated that the evidence to be taken may be used in any suit or proceeding that may be brought by any of the parties hereto, or the parties represented by the persons here present.

JAMES GRIFFITHS, being duly sworn and examined as a witness for the Pomaron, testifies as follows:

By Mr. Burlingham:

Q. How old are you?

A. 33 years of age.

Q. Where do you live?

A. Aberavon, South Wales.

Q. How long have you followed the sea?

A. I have been at sea since I was 14 years of age; I have been at sea 19 years.

Q. How long have you been master?

A. I have been master of that ship 21 months.

129 Q. Is this your first command?

A. My first command, but I have held a master's certificate nine years.

Q. You have been chief officer of other vessels?

A. Yes, in the Furness employ 13 years.

Q. The Pomaron is owned by Furness, Withy & Company?

A. Yes, West Hartlepool.

Q. What is her tonnage?

A. One thousand one hundred and twenty-seven net registered tonnage.

Q. Gross?

A. One thousand eight hundred and twenty-nine; I am not positive on that. (Referring to paper) Gross, 1809.

Q. Give her dimensions?

A. Two hundred and seventy-eight feet long, 40½ beam, 20½ depth of hold; she has triple expansion engines, 1,000 indicated horse-power.

Q. What kind of a propeller?

A. Right-handed propeller.

Q. What is her full speed?

A. Nine knots loaded ship.

LOSE IN CENTER

Q. She is a freight boat?
A. She is a freight boat.
Q. You arrived in Newport News the day before yesterday?
A. Yes, sir.
Q. For coals?
A. Yes, sir.
Q. You are en route for Hamburg?
A. Yes.
Q. From where?
A. From Gulfport.
Q. As soon as these depositions are taken you expect to proceed to Hamburg with this crew and outfit?
A. Yes.
Q. When did this collision happen?
A. This collision happened on the morning of the 2nd of February.
Q. At what hour?
A. Eleven twenty.
Q. What voyage were you on then?
A. On a voyage from Baltimore to Leith.
130 Q. When did you leave Baltimore?
A. The 1st of February at 7 A. M.
Q. Where did the collision take place?
A. One hundred and ten miles outside of Cape Henry; that is by dead reckoning.
Q. What was the latitude and longitude?
A. 37.26 north, 73.42 west, I think it was.
Q. What were you drawing when you left Baltimore?
A. 16.2 forward, 16.3 aft; this was fresh water, in Baltimore.
Q. What difference does that make?
A. About 4½ inches in that ship.
Q. In salt water she would draw so much less?
A. Yes.
Q. What was the cargo?
A. The cargo was grain and general cargo; 2,500 tons of cargo, and we had about 300 tons of bunkers on board.
Q. Coming to the morning of the collision, were you on watch?
A. No, I was asleep previous to being called.
Q. At what time did you go off duty?
A. I was on deck from 7 o'clock in the morning of the first until 5 in the morning of the second, because there was ice in the Chesapeake coming down and it was important for me to be up, and it cleared after 5 o'clock, and the second officer was on the bridge, and I told him I was going to sleep. I said, "Give me a call if it gets thick or dirty," regular orders, and I went aft.
Q. What was the weather then?
A. The weather was clear then, fresh breeze from southwest.
Q. Where are your quarters?
A. Right aft, the after end of the ship.
Q. The ship has an open bridge?

COPY BOUND CLOSE

A. You have to come down a well deck from the bridge
131 amidships down on the well deck, and then up on the poop to go down to my room.

Q. You left the bridge at 5 o'clock?

A. After 5 o'clock in the morning.

Q. Did you come out again before the collision?

A. I woke up at 8 o'clock, and got a cup of tea.

Q. Did you take a look then?

A. Yes; the weather was clear, the sun was shining then and I had a cup of tea and laid back again, and told them to call me before noon to get the position.

Q. Did you go to sleep?

A. Yes, I went to sleep; I had been up about 22 hours previous to that.

Q. What wakened you?

A. The steward came in and woke me up and told me to come on deck immediately, and before I got out of the cabin we had collided with another vessel.

Q. Were you undressed, did you have to dress to go out?

A. I just slipped my trousers on and my coat and slippers and came on deck like that.

Q. Before you got out the collision occurred?

A. Yes, before I got on deck the collision occurred; I felt the vibration of the ship, the engines were going astern before I got out of the cabin; I could feel the vibration of the ship through the engines going astern.

Q. Where is the door from your quarters?

A. You come out into the saloon first and go up some stairs to come up on the poop.

Q. Which way do those stairs lead?

A. Aft; it is a scuttle.

Q. The stairs ascend with a look to the stern of the vessel?

A. Yes, they have a turn.

Q. When you got on the poop deck you ran forward?

A. Yes, hard as I could.

132 Q. On which side of the ship?

A. Port side of the ship.

Q. Is there a fore and aft bridge?

A. I had to go down on the well deck and up on the bridge again.

Q. What was the first you saw of the other vessel?

A. She was a little to leeward of us.

Q. How was the wind?

A. The wind was about west then.

Q. Which was the leeward side?

A. That was to the eastward.

Q. Which side of you was leeward?

A. The port side.

Q. Where was the other vessel?

A. She was about half a mile I should think, about four points on our bow, barely that.

Q. What bow?

SE IN CENTER

A. Port bow.
Q. How were you heading then?
A. Somewhere about south I think, because the wind was abeam, being west.
Q. How far away was the other vessel then?
A. About half a mile away, I think.
Q. Could you see from that distance?
A. I could see the ship.
Q. How she had been hit?
A. I could see some signs in the bulwark on the starboard side abaft the engine room.
Q. Your first attention was to your ship?
A. Yes, I didn't trouble about that as long as she was clear.
Q. What did you do?
A. I got on the bridge and the chief officer was there, and I said how did this happen, and he said it was caused through her not giving way according to the rule of the road, so I ordered the boat swung out to ascertain the damage to my ship.
133 Q. Did you launch a boat?
A. We swung them out.
Q. Swung them out of the davits?
A. Swung them out of the davits.
Q. You did not lower away?
A. Did not lower away; he said the ship is not making any water, and the forepeak is full.
Q. That, of course, is forward of the collision bulkhead?
A. Forward of the collision bulkhead, yes, sir.
Q. Did you make any examination yourself?
A. No, I stopped on the bridge.
Q. You accepted his report?
A. Yes, then I hoisted my signal to the other vessel.
Q. What signal?
A. Asking if he wanted any assistance.
Q. What was the reply?
A. He said, "Do not abandon me."
Q. This was by flags?
A. This was by flags, yes, sir, so I stood by him.
Q. Just turning over your engines?
A. The engine was going astern until—the chief officer stopped the engines after I got on the bridge.
Q. When you got on the bridge were they still going astern?
A. Yes.
Q. Did you order him to stop them, or did he do it of his own volition?
A. He stopped them on his own.
Q. How was the weather then?
A. The weather was clear, the sun was shining at times.
Q. Was there any snow?
A. No indication of snow.
Q. Or rain?
A. No; our decks were dry.

COPY BOUND CLOS

Q. Or hail?
A. No.
Q. Any snow on your deck?
A. No.
134 Q. The sun was shining?
A. Yes, the sun was shining at intervals.
Q. Some clouds?
A. Yes, it was cloudy.
Q. Any difficulty seeing vessels?
A. No, sir, not at all.
Q. At any reasonable distance?
A. No.
Q. How far away could you see a vessel?
A. As far as the horizon.
Q. How was the wind?
A. The wind was about west.
Q. What sort of a breeze?
A. Fresh breeze, four or five, I think, on the Beaufort scale.
Q. Tell what happened from that time?
A. I stood by this ship afterwards, and about noon she went full speed ahead across our bow, steering about west northwest.
Q. How were you pointing then?
A. We were pointing about west of south, and then I followed him full speed.
Q. Any signals between you?
A. No, I didn't give any signals; just followed him up; he told me not to abandon him.
Q. Had you been able in this time to observe what the injuries were?
A. No; I thought he was all right when he started to go ahead, and I followed him up, anyway.
Q. At what distance?
A. As far as I could, he was a faster ship than me; he was leaving me behind, and about 2 o'clock he seemed to be stopping and letting some steam escape, so I went close alongside and stopped my ship, and found he had all his boats in the water and all of the crew in them, so I picked them all up.
Q. Did he have passengers?
A. Three passengers; there were 52 all told.
135 Q. Including three passengers?
A. Including three passengers.
Q. Did you use your own boats?
A. No; we had our own boats swung out already.
Q. His came alongside?
A. Yes.
Q. And you took them all on board?
A. Yes, and after we got them on board I asked the other captain if we could see anything else, and he said, "No, it is impossible to board her again, because the water is up to the after decks; the after decks are awash."
Q. This steamship was the Hamburg-American Line Alleghany?
A. Yes.

OSE IN CENTER

Q. When did you first learn her name?
A. It was the mate told me her name; he said it would be only risking life to send anybody aboard there.
Q. Their captain or officer?
A. The captain; he came on the bridge to me and thanked me for saving them.
Q. What became of the Alleghany?
A. We stood by to see what was going to be done, and she sank at about 3:20 P. M.
Q. You proceeded to Newport News?
A. Yes, she went down stern first, and we proceeded in to Newport News.
Q. When did you arrive there?
A. About 6 o'clock the next morning.
Q. What was the nature of the injuries which the Pomaron sustained?
A. Her bow was all knocked to one side, from the port side to starboard, and the stem was broken in five places, but we didn't find that out until we got to the dry dock; and the port anchor was gone.
Q. Was that a patent anchor?
A. A patent anchor.
136 Q. How was it; in the hawspipe?
A. Right up in the hawspipe as we generally carry it.
Q. That was carried away?
A. Yes, the anchor was gone; had a big hole in the bow, and the stem was broken, the injury was below and above the water line.
Q. Can you tell what the direction of the blow on your stem was; did she twist or bend one way or the other?
A. From port side to starboard; our stem was over to the starboard side.
Q. Did you make a drawing of it at the time?
A. Yes, I have it.
Q. When did you make this?
A. This was after the stem was taken out in the dry dock.
Q. Where?
A. Newport News.
Q. Is this your own?
A. Yes.
Q. Did you measure these measurements?
A. Yes.
Q. Explain the diagram to us so it can be put on the record?
A. I could not explain better than it is here; looking end on to the ship the stem was taken over that side; that is the deck line there (indicating).
Q. The heavy vertical line represents the original position?
A. Yes.
Q. And the broken line represents what?
A. As she was over.
Q. Those measurements are what, in feet and inches?

COPY BOUND CLOS

A. I forgot what scale I put it; this is about 21 feet 2 of the stem anyway (indicating), at any rate it is drawn to scale.

Mr. Burlingham: I offer the drawing in evidence.
It is marked "Pomaron Exhibit 1 of June 7, 1912."

137 Q. Here are some photographs, are these correct photographs of the vessel; do they represent the Pomaron after the accident?
A. Yes.
Q. Take this one first; where was that taken?
A. Taken in the stream here, I expect.
Q. That shows the bend of the stem?
A. Yes.

It is offered in evidence and marked "Pomaron Exhibit 2 of June 7, 1912."

Q. (Handing witness photograph.) And this also is correct?
A. Yes.
Q. Taken here?
A. Yes.

It is offered in evidence and marked "Pomaron Exhibit 3 of June 7, 1912."

Q. (Handing witness photograph.) And this one shows where the anchor was carried away?
A. Yes; they all show the anchor.

The photograph is offered in evidence and marked "Pomaron Exhibit 4 of June 7, 1912."

Q. (Handing witness picture.) And this one shows what?
A. That is from the starboard bow.

It is offered in evidence and marked "Pomaron Exhibit 5 of June 7, 1912."

Q. And this one, too?
A. Yes.

The above pictures are offered in evidence and marked "Pomaron Exhibit 6, of June 7, 1912."

138 Cross-examination by Mr. Kirlin:

Q. When and where was the ship built?
A. Built in Grangemouth.
Q. By whom?
A. Grangemouth & Greenock Dry Dock Company.
Q. When?
A. She was four years old last October.
Q. What general condition was she in before this accident?
A. Very good condition.
Q. Passed at Lloyds?
A. She is in the British Corporation.

CLOSE IN CENTER

Q. What classification?
A. A-1, I expect.
Q. The highest classification?
A. Yes, that is the highest.
Q. What did the steward say to you when he came to your room?
A. He said, "Get up quick, sir, you are wanted on deck."
Q. Is that all he said?
A. He said, "There is going to be a collision."
Q. Had you heard anything before that?
A. No, I had not heard anything.
Q. Were you in your bed at the time?
A. I was asleep, yes, sir.
Q. What was the next thing that you noticed?
A. I jumped out and ran out of the cabin as soon as I could, but before I got out of the cabin we had collided.
Q. Before you got dressed?
A. Before I got out of the saloon.
Q. When did you notice the reversing of the engines?
A. I felt the reversing of the engines; I was right above the propeller asleep; the vibration of the ship.
Q. When did you feel that?
A. As soon as I jumped out of bed.
139 Q. Did you hear any whistles?
A. No.
Q. Can you hear the whistle in your room if it is blown?
A. I could if I was awake.
Q. No whistles blown on your ship after you were awakened?
A. No.
Q. How soon did you feel the shock of the bump?
A. A few seconds after I jumped out.
Q. About the time you felt the reversing?
A. As soon as I woke I felt the reversing.
Q. It was only a matter of a few seconds until the collision?
A. Yes, sir.
Q. Did you hear any whistles from the other vessel?
A. No.
Q. You immediately ran up on deck and on the bridge?
A. Yes.
Q. Where is the steering done from?
A. The helmsman is on the upper bridge.
Q. Did you notice how the helm was?
A. The helm was hard-a-port.
Q. Hard-a-port?
A. Yes.
Q. Did the officer say anything about the helm?
A. I never heard him say anything about the helm; I asked how this happened and he said it was caused through the other ship not complying with the rules of the road.
Q. Not giving way?
A. Yes.

COPY BOUND CLOSE

Q. What was it he said; what did you say, what were your words?
A. I said, "How did this happen?"
Q. Is that all you said?
A. Yes; he said it was caused through him not giving way under the rule of the road, I think were the words.
Q. Did he say what rule of the road?
A. No.
Q. Did you know at the time from the position of the vessel what the rule was he claimed had been infringed?
A. No, I couldn't tell exactly then.
140 Q. Where was the other boat then?
A. Away on our port bow, to leeward of us.
Q. How was your ship heading?
A. Somewhere about south, I think; I didn't look at the compass right away.
Q. What was the course when you left the deck in the morning?
A. East by north was my course by compass.
Q. What was your true course?
A. Magnetic course east by north quarter north; she had three degrees deviation, three degrees westerly.
Q. Was the engine still backing when you got on the bridge?
A. Yes.
Q. You judged the direction of the ship's head by the wind?
A. Yes.
Q. Which direction was the wind?
A. The wind was west.
Q. How was it coming over the ship?
A. It was coming from starboard to port.
Q. You said the wind when you went to bed was southwest?
A. Yes; when I got on deck it was west.
Q. You found that out afterwards?
A. Yes.
Q. I am trying to find out what it was that makes you think the ship was heading south when you got on the bridge?
A. Afterwards I found the wind was west, the wind was right at right angles to us and I thought we were heading about south.
Q. Did you look at the compass at all?
A. Not then; I wanted to see if we were clear of that other ship.
Q. How far away was the other ship?
A. About half a mile, I think.
Q. Was she backing?
A. I couldn't say that.
Q. She was over on your port bow about four points, half a mile off?
A. Yes, sir, about that.
141 Q. How did she get away half a mile from you in the few seconds you were occupied getting up on the bridge?
A. I don't know how she got there; that is about the distance I should think she was off.
Q. How long was this after you felt the shock of collision that you got on the bridge?

OSE IN CENTER

A. It would not be very long.
Q. A matter of seconds or minutes?
A. It would be only a matter of seconds; say a minute away.
Q. From the time you were called until you were on the bridge?
A. Yes, I don't expect it would take much longer.
Q. It is quite evident the boats could not have been half a mile apart at that time, isn't it?
A. I am only just estimating.
Q. She seemed an appreciable distance away?
A. She seemed to be half a mile I should say.
Q. Did you look at the compass shortly afterwards?
A. It was a few minutes before I looked at the compass.
Q. The ship's head swung somewhat?
A. Yes.
Q. Was she swinging under the port helm when you got on the bridge?
A. We were swinging under the port helm, yes, sir, and the reversing engines would cause her to go, too.
Q. Did the officer say anything to you as to how long this vessel had been in sight?
A. No, sir, not then, because I sent him down to get the boats out and sound the ship afterwards.
Q. He reported the circumstances to you more in detail later?
A. Yes.
Q. Did he say whether it had been snowing during the morning?
A. He said it had been clear all the morning; he said he had seen her a long time before it collided.
142 Q. Did he tell you how she had been heading?
A. Our ship?
Q. The other ship?
A. He said she had been going about south.
Q. You had been approaching within a point of right angles according to the report he gave you?
A. Something about that, yes, sir.
Q. Did he report to you whether the other vessel had sounded any signals, or whether he had sounded any?
A. That was afterwards when we were discussing; he said the other vessel gave two blasts and there was nothing for him to do but to reverse his engines.
Q. Did he tell you whether he had given any blasts?
A. He said he gave one blast and ported a little.
Q. Did he say when that was?
A. He said that was before he gave the two blasts.
Q. How long was that before the collision; did he say?
A. I forgot how long it was now; he did tell me but I forgot how many minutes now exactly.
Q. Try and recall it.
A. I forget now; about three or four minutes I think he said.
Q. Did he say how far the vessels were apart when he blew one blast and ported a little on the Pomaron?
A. He said about a mile I think off.

COPY BOUND CLOSE

Q. Did he say how far the other ship was away when she blew the two signals?

A. No, I don't remember; he didn't tell me that.

Q. Did he say how long it was after he had blown one whistle that the other ship blew two?

A. Yes, he said it wasn't long after he blew the one blast that she gave the two blasts, and he immediately reversed, he said, seeing he was going to cross her bow.

143 Q. Your ship reversed?

A. Yes.

Q. Did he say whether he had starboarded the helm at any time before the collision?

A. No.

Q. I mean your mate?

A. The Pomaron never starboarded, he said.

Q. Did he tell you?

A. Yes, he told me we never starboarded.

Q. He said you did not starboard?

A. Yes.

Q. But he had ported?

A. Yes.

Q. Did he port again when he got the two blasts from the Alleghany?

A. He put the engines full speed astern, and I believe he put the helm hard over to port.

Q. It must have been so because you found it hard-a-port?

A. It was hard over when I went on the bridge.

Q. Did he say how much he ported the first time?

A. He said he ported a little.

Q. Those were his words?

A. Yes.

Q. Had he left the helm to port from the time he blew the one blast until he subsequently put it hard-a-port?

A. I don't know that.

Q. Did he tell you that?

A. No, he didn't tell me that; I know I found it hard over when I got on the bridge.

Q. You made some report of this disaster?

A. Yes.

Q. Have you got a copy of your report?

A. I only made a report to the Board of Trade in England.

Q. Didn't you make a report to your agent or your owners, a report of the accident?

A. Yes, I wrote home to my owners.

Q. Have you a copy of your report?

A. I don't think I have.

Q. Did you make any entry about it in your official log book?

A. Yes.

144 Q. Have you a copy of that by you?

A. I have a copy of that; it is on board the ship though.

Mr. Burlingham: I think I have a copy of the official log book.

LOSE IN CENTER

Q. You have that on board, have you?
A. No; my official log book is delivered up at Leith; the voyage finishes and our Board of Trade requires us to hand up the official log book.

Mr. Kirlin: I call for the production of the captain's report of the accident to the owners.
Mr. Burlingham: We decline to produce it; we have not it, and there is no reason why we should produce.
Mr. Kirlin: I call for a copy of the report to the Board of Trade.
Mr. Burlingham: I have not a copy of that.

Q. Have you a copy of your report to the Board of Trade?
A. No, I have not got that.
Q. You make a separate report to the Board of Trade besides the report you make in your official log?
A. Yes.
Q. That is what I want.

Mr. Kirlin: I ask that a copy be obtained and produced. I ask for the production of a copy of the entry made in the official log book.
Mr. Burlingham: I have that here and produce it.

145 Q. (Handing witness paper.) Is this a copy of the entry in your log book (handing witness document which Mr. Burlingham produces)?
A. Yes.
Q. The only part of this report contained in your log relating to the collision is, "Latitude 37.26 north, longitude 73.42 west, eGrman steamer Alleghany collided with us, her starboard side abaft the bridge deck coming in contact with our port bow"; is that right?
A. Yes.
Q. Is that in compliance with your obligation to make a report of the facts and circumstances connected with the collision?
A. That is all our Board of Trade requires; we were to make a deposition afterwards to them—a sworn statement.
Q. That deposition is the report you have already referred to?
A. Yes; that is just the official log account of how everything happened.
The above paper is offered in evidence and marked "Yangste Exhibit A of June 7, 1912."
It is as follows:

"Abstract of official log, February 2nd, 1912. Lat. 37. degrees 26 minutes N, Long. 73 degrees 42 minutes W.
"German steamer Alleghany collided with us, her starboard side abaft the bridge deck coming in contact with our port bow. After ascertaining the extent of our damage and finding no water making into the holds, but forepeak "full up to sea level, we hoisted signals asking the Alleghany if she required any assistance and she replied 'Not to abandon her,' so we stood by.

COPY BOUND CLOS

"Soon after the Alleghany went ahead full speed steering W, N W and we followed full speed. About 2 P. M. she stopped
146 and when we got up close to her found the passengers and crew had all taken to the boats, so we picked them up 51 persons all told.

"The master of the Alleghany was asked if it was possible to save anything else but he replied it would not be safe to board her again as the water was up to the after deck when they left her. We stood by close and at 3:20 P. M. the Alleghany sank astern first and then we proceeded to Newport News. The Alleghany belonged to Hamburg and was bound from New York to Haiti, this was told us by the master of the Alleghany. I, the master of the Pomaron gave the master of the Alleghany full particulars of our voyage, ship's name and port of registry.

JAS. GRIFFITHS, *Master,*
W. A. WESTGARTH,
First Mate."

Q. Have you got the officer's log or a copy of the entry in it?
A. The chief officer has a copy of it.
Q. You have not compared this document with the log book; I understand the original log book is not here?
A. No.
Q. Where is it?
A. It is with our owners; we delivered the log book at the end of each voyage.

Mr. Kirlin: I ask for the production of the original log.
Mr. Burlingham: We will send for it.

Q. Have you a scrap log?
A. I asked the chief officer for the scrap log after we arrived at the dry dock and he said "I have not been able to find it since we have arrived here, and it can't be found."
147 Q. That is unfortunate; when did you see it last?
A. The day after the Alleghany's crew left the ship; it was missed; he said he could not find it anywhere, he looked high and low.
Q. Do you think they got it?
A. I don't know, but I would like to get it.

Mr. Kirlin: I call upon counsel for both steamship companies to produce that log.

Q. The captain of the Alleghany came on the bridge of your vessel after the accident?
A. Yes.
Q. Did you have any talk with him about the circumstances of the accident?
A. No.
Q. Did you have any talk with the navigating officer of the Alleghany on the subject?
A. No.

CLOSE IN CENTER

Q. Wasn't it mentioned between you and any of the officers of the other ship?

A. No, I said, "Make yourselves comfortable; I have to go into Newport News"; I said, "there is a saloon and all my berths there for you"; it was cold weather, you know; we spoke the Sabine, one of the Mallory Line; I put up the signal to him saying I had something important to communicate to him so he stopped and came alongside, and I told him we had collided with the Alleghany and she had sunk, and we had the crew and passengers.

Q. He did not get close enough to get the scrap log?

A. No.

Q. Did you have a wireless?

A. No, sir; that is the reason I stopped the Sabine; she had wireless; the revenue cutter, when we got down towards Hog Island, this revenue cutter, the Onondaga, came out and asked if we were all right, and I said, "We are holding out well"; it was blowing strong then; he said, "You don't want assistance"; and I
148 said, "No, I think we will get inside the Capes all right"; he said, "Anyway I will stand by you until you get inside the Capes", so we had her alongside of us steaming all along.

Cross-examination by Mr. Harrington:

Q. I understand when you wakened you jumped right up?

A. Yes.

Q. You hustled to get out as quickly as you could?

A. I should think so.

Q. And before you were able to get your clothes on you felt the crash of collision?

A. No, I had got my trousers on.

Q. It was just a matter of a few seconds from the time you were called until the vessels were in actual collision?

A. Yes.

Cross-examination by Mr. Kneeland:

Q. Have you ever had occasion to put the Pomaron's helm hard-a-port and reverse her engines when she was about in the same trim?

A. No, I don't think going full astern.

Q. Do you know how long it would take her under those circumstances to change her course four points?

A. Well, it wouldn't take very long.

Q. That is very indefinite; how long would it take her with her wheel put hard over and her engines reversed to change her heading four points to starboard?

A. It would take over a minute.

Q. And to change eight points?

A. Once she starts swinging she will come quick; I have never timed her.

Q. The first change is slower?

A. The first change is slower; of course, it takes a certain time to put the helm over.

COPY BOUND CLO

149 Q. You have never had an opportunity to test how long it would take to change the course eight points?
A. No, sir, I have never timed her.

By Mr. Kirlin:

Q. Does she answer her helm readily?
A. Yes, she is pretty quick on the helm.

By Mr. Kneeland:

Q. Does she steer by steam?
A. Yes.
Q. Who was at the helm?
A. Hyslop.
Q. Is he here?
A. Yes.

By Mr. Kirlin:

Q. Have you ever noticed how long it takes to stop the ship by reversing her engines from full speed ahead?
A. It would take a good while to stop the ship dead.
Q. How many lengths do you think she would travel before she stopped?
A. I reckon it would take about five minutes to stop her dead.
Q. She was not stopped at the time of the collision?
A. No, I believe she was going a little ahead when they collided.

Cross-examination by Mr. Smith:

Q. I understood you to tell Mr. Kirlin that you had got out into the saloon at the time?
A. Yes, you see my room is off the saloon; the saloon is in the middle of the poop and my room is on the starboard side of the entrance, the room is on the starboard side.
Q. Do you recollect whether you had got in the saloon or
150 whether you were still in your room when the impact took place?
A. I was in the saloon.
Q. You are sure of that?
A. Yes, I was putting my coat on.
Q. I suppose even if you had not fully stopped when you struck the Alleghany that impact would probably cause you to come about dead in the water?
A. It would wheel you around at the angle she hit us, I think, help to swing her around.

Redirect examination by Mr. Burlingham:

Q. The place where she sank was how far from the place the collision occurred?
A. I reckon about 18 or 19 miles.
Q. Did you work out that position by dead reckoning or by observation?

LOSE IN CENTER

A. I got the place where she sank, I got the chief officer to take an observation by the sun; that observation is correct.

Q. Do you recall what it is?

A. Yes, 37.33 north; 74.4 west; of course, the other is dead reckoning; we had no time then to get sights.

Q. What time did you pass Cape Charles?

A. Cape Charles light vessel?

Q. Yes?

A. About twenty minutes of two, I think.

Q. I mean Cape Henry?

A. Cape Henry, we discharged the pilot at half past twelve.

Q. You said this collision was about 110 miles by dead reckoning from which Cape?

A. Cape Henry; that is where we discharged the pilot, just off Cape Henry.

Q. Have you plotted that out on the chart?

A. The position?

Q. Yes.

A. Yes, we got the position, but it is a very small scale
151 chart; we were going home; we were clear of everything then.

Q. How many hours did it take you to make that 110 miles?

A. I gave her over nine knots, I think.

Q. I don't mean in plotting it, but if you passed Cape Henry at half past twelve—the collision occurred about 11:20—that is nearly 11 hours?

A. Yes.

Q. And 110 miles in 11 hours would make 10 miles an hour?

A. Yes.

Q. But you told us your top speed was 9 miles an hour; I wish you would explain that?

A. I was allowing for the wind being aft and we got into the stream then.

Q. You were aided both by the wind and Gulf Stream?

A. Yes; we had not been long in the Gulf Stream; we had the other stream with us on the inside.

Q. In answer to Mr. Kirlin, you have given a great deal of conversation which you had with your chief officer about the collision and you say he told you that he ported a little?

A. Yes.

Q. Did he tell you why he ported?

A. No, he didn't tell me why.

WILLIAM ARMSTRONG WESTGARTH, being duly sworn and examined as a witness for the Pomaron, testifies as follows:

By Mr. Burlingham:

Q. Are you the chief officer of the Pomaron?

A. Yes.

Q. How long have you been?

A. About two years and six months up to now.
152 Q. Chief officer all that time?
A. Yes, sir.
Q. What certificate do you hold?
A. Master's.
Q. How long have you held it?
A. Close on three years now.
Q. How long have you been going to sea?
A. About 13 or 14 years.
Q. In steam always?
A. Excepting the first three years.
Q. The first three years in sail?
A. On the training ship; she was a sailing ship.
Q. How old are you?
A. 26.
Q. Have you been on other steamers as an Officer?
A. Yes.
Q. In what capacity?
A. Second and third.
Q. In the employ of Furness, Withy & Company?
A. About 7 years I have been with Furness, Withy.
Q. What other?
A. Twelve months with Ropner of West Hartlepool, and previous to that I was with T. & J. Harrison at Liverpool.
Q. Were you in charge of the navigation of the vessel at the time of the collision with the Alleghany, February 2nd last?
A. Yes.
Q. When did you go on watch that morning?
A. About half past eight.
Q. Relieving whom?
A. The second mate.
Q. Did you go on the bridge then?
A. Yes.
Q. Did you remain on the bridge until after the collision?
A. Yes.
Q. Did you leave it at all?
A. For about five minutes when I took the bearings of the sun, about a quarter of an hour after I went on the bridge; I was only away about five minutes.
Q. How far from the bridge is the stem?
A. About 50 feet.
Q. Who was on the bridge with you?
A. New man was at the wheel.
153 Q. When did he come on?
A. Eight o'clock.
Q. How long did he remain at the wheel?
A. Until 10 o'clock.
Q. He was relieved by whom?
A. Hyslop, the apprentice.
Q. He is an apprentice?
A. Yes.

Q. Has he any rank?
A. He is on the articles as an apprentice.
Q. Where is the wheel?
A. On the upper bridge.
Q. Is it in a house?
A. No.
Q. On an open bridge?
A. Yes.
Q. Is there any clock on the bridge?
A. No, sir.
Q. What was the weather when you went on watch at 8:30?
A. Moderate breeze.
Q. From what direction?
A. About west—northwest, moderate sea.
Q. How was the weather?
A. Cloudy but fine and clear.
Q. Was there any snow or rain or hail or mist?
A. No.
Q. Any difficulty about seeing objects?
A. No.
Q. During your watch did you see any vessels except the Alleghany?
A. No.
Q. About when did you first sight the steamship Alleghany?
A. A little after half past ten.
Q. Where away?
A. Ten or 12 miles away then.
Q. On which hand?
A. On the port side, port bow.
Q. How many points?
A. Four or five points off on the bow.
Q. Did you take a look at her with the glass?
A. Yes.
Q. Did you make out what general direction she was coming?
A. Yes, about southward at the time I saw her.
154 Q. What was your course?
A. East by north compass.
Q. That is your compass course?
A. Yes.
Q. Is there any deviation or variation?
A. Quarter of a point west; east by north quarter north is the magnetic course.
Q. What speed were you going at?
A. About 9 knots an hour.
Q. Were the engines full speed?
A. Yes.
Q. You have an indicator or dial?
A. Yes.
Q. Which registered full speed, did it?
A. Yes.
Q. How long had you been on this course, east by north?

A. Since we got outside Cape Henry, after we got clear the course was set.
Q. During your entire watch were you on that course?
A. Yes, sir.
Q. At same speed?
A. Yes, sir, same speed.
Q. How do you judge you were making 9 knots?
A. That is about the average speed.
Q. Of course the vessels were on crossing courses and approaching each other?
A. Yes.
Q. Was she going any faster than you?
A. Yes, sir, considerably faster than us.
Q. Tell us what happened from that time on?
A. From the time I first saw the Alleghany?
Q. Yes.
A. I was watching pretty closely while he was coming up, and I saw his bearing was not changing at all; all the time he was closing in on us, but getting pretty well in view all the time until he was about a mile away, and I thought he was getting pretty close and it was time for him to do something.
Q. Did you take a look with your glass?
A. Yes.
Q. Did you make out men on the bridge?
A. I could see no one on the bridge at all.
155 Q. Had she a wheel house on the bridge?
A. Yes, and she had dodgers up.
Q. A wind shield?
A. Yes.
Q. Which side of the bridge was this wind shield?
A. Starboard side.
Q. You saw nobody?
A. Nobody on the bridge at all.
Q. They were getting pretty close?
A. Yes.
Q. As close as a mile?
A. Yes, so I thought I would give him a blast on the whistle.
Q. What for?
A. To attract his attention.
Q. Wake him up?
A. Wake him up a bit, and I also ordered the helmsman to port a little.
Q. Did he obey that order?
A. Yes.
Q. How much did he port?
A. She went off the course about a point; went off to about east.
Q. Why did you port?
A. I had to give him a little more clearance; I expected him to come under my stern all the time, and they were getting too close as I thought to be safe.

Q. Did you think there was any danger then?
A. Yes.
Q. What was the danger?
A. I saw if he was going to keep on the way he was doing he would catch us somewhere about the engine room.
Q. If you had maintained your course he would have struck you near the engine room?
A. Yes, about midships.
Q. Was there any indication he was changing his course at all then?
A. No, none at all.
Q. And the effect of porting your helm would be to give him more room?
A. Yes; by us porting like that it would get us further away he would not catch us in the engine room, if he had not altered his course at all.
156 Q. If you had both maintained the courses you were on then without change, what do you think would have happened?
A. He would have run right into us amidships.
Q. Are you sure of that?
A. Yes.
Q. Would not he have got across your bow?
A. No, sir, could not have done it.
Q. Could you have possibly have got across his bow?
A. No.
Q. He was going faster than you were?
A. He was going faster than we were.
Q. What was the result of this blast of yours to wake him up?
A. About a minute or so after I gave him the blast he answered and gave me two blasts.
Q. You knew what that meant?
A. Yes.
Q. What did it mean?
A. That he was going to cross ahead of me.
Q. What did you do?
A. I rang the engine full speed astern as soon as he gave me two blasts, and reversed the engine.
Q. Did you make any signal when you did that?
A. No.
Q. Put your engines full speed astern?
A. Yes.
Q. Did you do anything to your wheel?
A. Put it hard-a-port.
Q. She has a right-handed propeller?
A. Yes.
Q. When she backs her stern swings which way?
A. To starboard.
Q. And the porting of your helm also helped that?
A. Yes.
Q. Your object was to escape him if possible.

A. Yes.
Q. Now, did you take the time of these things?
A. No, sir, there was no clock there.
Q. Did you look at your watch?
A. I had no watch with me.
157 Q. Did you check your way by this order to the engines?
A. Yes.
Q. Was the order obeyed?
A. Yes.
Q. Did the signal come back on the dial?
A. Yes, sir, at once.
Q. What happened?
A. After I had rung full speed astern I saw the Alleghany—she was getting probably half a mile or a little less—she put her helm hard-a-starboard and I could see she was swinging around, her stern was flying into us and of course when he put his helm hard-a-starboard his stern swung around and caught us on the bow, about abreast of No. 3 hatch.
Q. Where did you come together?
A. At an angle of about 45 degrees I should think, our port bow struck him just in the wake of No. 3 hatch.
Q. Abaft the engine room.
A. Abaft the engine room.
Q. Had you way on at the time?
A. Very little at the time we struck him.
Q. How long do you think it was from the time you reversed the engines until the two vessels came together?
A. About four minutes.
Q. How long do you think it was from the time you blew your one blast until you gave the order to reverse?
A. It would be less than a minute, somewhere about a minute; probably less.
Q. As I understand you you blew one blast and ported your helm a little, and in half a minute or so the other vessel replied with two blasts, and you instantly reversed your engines?
A. Yes.
Q. Did you put them at stop and then full speed astern?
A. No, put the indicator right over.
Q. Without stopping?
A. Yes.
Q. What sort of a blow was it, a hard blow?
A. The wind——
158 Q. No, was it a hard blow of collision?
A. We didn't feel the shock very much; it was a pretty hard blow.
Q. Did the Alleghany stop her engines?
A. No.
Q. How do you know?
A. I could see the propeller as she was going past us.
Q. Did she go past you?

A. Yes, when we struck him the Alleghany heeled over and I could see——

Q. Heeled over to port?

A. Yes, and he slid right across our bow, and after he got past the bow his propeller was going ahead.

Q. You could see his propeller in forward motion?

A. Yes.

Q. How far did he go before he stopped his way?

A. I suppose about a mile or a mile and a half before we were both stopped because we were going astern and we kept going astern for a few minutes after.

Q. You say you saw the propeller?

A. Yes.

Q. Could you see the rudder?

A. Yes.

Q. What helm was she under when she went by you?

A. Starboard helm at the time.

Q. How much to starboard?

A. Hard to starboard.

Q. Could you see it by the rudder?

A. Couldn't make it exactly out, whether it was really hard over, but you could see it was well over, but you couldn't see whether it was jammed up or not.

Q. How was the weather at the time of the collision?

A. Fine and clear.

Q. Did you ever hear anybody say that it was snowing at the time?

A. Not of our crew.

Q. From these others?

A. After they got aboard in the afternoon, Saturday afternoon. when I first heard any mention about any snow storm.

159 Q. Who did you hear speaking of it?

A. The chief officer of the Alleghany.

Q. Where?

A. We were all in the engineer's mess room at the time.

Q. On the Pomaron?

A. Yes, sir, having dinner.

Q. Where was the ship?

A. In Newport News; this was on Saturday in Newport News and the chief officer brought me in a paper and pointed out an account of the collision in a Newport News paper, and at the part where it said the collision occurred in a blinding snowstorm, and pointed it out to me and said, "It is all right, remember this"; that is the first thing I heard of it.

Q. Did you say anything to him?

A. No.

Q. Is that the first you ever heard about snow?

A. Yes.

Q. As a matter of fact was it perfectly clear?

A. Perfectly clear.

Q. Had there been any snow during your watch?

A. No.
Q. Was there any snow afterwards?
A. We had a very little, just a little flurry about half-past 2 or 3 in the afternoon.
Q. On the passage in from the place of collision to Newport News what was the weather generally?
A. Strong wind from the west; it was freshening up, and a rough sea getting up.
Q. How about the weather itself?
A. The weather was fine and clear.
Q. All the way in?
A. Yes.
Q. (Handing witness paper.) I show you an extract from a Newport News paper; is this what you refer to "Due to a blinding snow storm and heavy sea, considerable time was taken to transfer the passengers"; is that what you refer to?
A. Yes.
160 Q. Was there any truth in that?
A. None at all.
Q. Did you keep the ship's log?
A. Yes.
Q. Make the entries yourself?
A. Yes.
Q. Are they transcribed from a scrap log?
A. Yes.
Q. Is that scrap log a book or a slate?
A. It is a book.
Q. Where was that kept on the Pomaron?
A. In the wheelhouse.
Q. The scrap log?
A. Yes.
Q. Did the officer on watch make the entries?
A. Yes.
Q. Did you make any entries with regard to this collision?
A. Yes.
Q. In the scrap log?
A. Yes.
Q. Where is the scrap log?
A. I don't know I am sure where that one is; the one we were using at the time I had made the entry and when I came to look for it two or three days after I couldn't find it.
Q. You had made an entry?
A. Yes.
Q. When did you make the entry?
A. About 1 o'clock, half-past one in the afternoon I made part of it and the remainder I put up in the dog watch at night, 7 o'clock.
Q. What was the last you saw of the scrap log?
A. I wrote it up Saturday up to the time of arriving at Newport News and left it in the chart room, and when I came to look for it afterwards I couldn't find any trace of it.

Q. Did you make a thorough search for it?
A. Yes, looked everywhere for it that it could possibly be put.
Q. Have you ever seen it since?
A. No.
161 Q. Did you transcribe the entries from that into the log?
A. Yes.
Q. Where is the ship's log?
A. I don't know; it was left at England this time.
Q. Have you a copy of that log?
A. Yes.
Q. Did you make it yourself?
A. Yes.
Q. When?
A. Two or three days after we arrived in Newport News while we were on the drydock.
Q. What did you do it for?
A. More for my own convenience than anything.
Q. Have you it there?
A. Yes.
Q. Is that the very paper which you wrote at that time?
A. Yes.
Q. Is that a true copy?
A. Yes.
Q. Of the entries as they appear in the ship's log?
A. Yes.
Q. Which you say is with the owners?
A. Yes.

Mr. Burlingham: I think it is much more convenient to produce it now so you can cross-examine about it rather than wait for the log book.

Mr. Kirlin: We will take it subject to production of the original.

Q. This is in your handwriting?
A. Yes.

It is marked for identification "Pomaron Exhibit 7." It is as follows:

"Friday, Feb. 2nd.

0.10 a. m. Tail of Horse Shoe Lt. Vl. abm.
0.20 a. m. Half speed.
0.25 a. m. C. Henry Lt. abm.
0.30 a. m. Engines slow.

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0.38 Stopped to discharge pilot.
0.50 a. m. Full speed ahead.
1.40 a. m. C. Charles Lt. Vl. abm.
Mod. wind smooth sea, fine & clear.
7.20 a. m. Wind hauls W. with heavy rain squall.
8.0 a. m. Mod. wind & sea cloudy but clear weather.
10.35 a. m. Sighted steamer on Port bow steering to southward.
Bearing about N. E.

11.14 a. m. Steamer getting close, keeping his course & speed, so in order to try and avoid collision I gave 1 (one) blast of whistle and altered my course to starboard. Other steamer answered by 2 (two) blasts.
11.17 a. m. Stop & full speed astern.
11.21 a. m. Collided with ss. Alleghany my port bow striking him abaft the bridge deck on starboard side.
11.26 a. m. Clear of steamer. Stopped engines. Captain gave orders sound ship ascertain damage & swing out life boats. Found holds making no water but forepeak full up to sea level. Signalled other ship asking him if he required assistance. He replied, not to abandon him, so we stood by.
0.10 p. m. SS. Alleghany proceeded towards shore so we followed him full speed. Steering W. N. W. magnetic. SS. Alleghany stopped & was sinking aft and crew taking to life boats.
2.5 p. m. Stopped engines close to steamer. Engines used as required in picking up crew out of boats.

163

2.40 p. m. All crew & passengers on board. Stood by SS. Alleghany until she sunk stern first at 3.20 p. m.
3.25 p. m. Proceeded full speed ahead back for Newport News.
4.50 p. m. Stopped to ask SS. Sabine to report by wireless the above collision & report steamer sunk & all hands safe on board this steamer & proceeding to Newport News.
5.5 p. m. Full speed ahead."

The Witness: It is a true copy, but I did not take the courses which were on the other page; it is on the same page, but on the left-hand side.

By Mr. Kirlin:

Q. Is this paper which you have produced which you say is a copy of the log a copy of the slate log or a copy of the log which was finally written up?

A. A copy of the log; it might not be word for word; it is just for my own use that I really took it.

The typewritten copy of the log is marked "Pomaron Exhibit 8 for identification of June 7, 1912," and is as follows:

"Log of the S/S. Pomaron from Baltimore Towards Leith, Friday, February 2nd, 1912.

12.10 a. m. Tail of Horse Shoe Lt. Vl. abeam.
12.20 a. m. Half speed.
12.25 a. m. Cape Henry Light abeam.
12.30 a. m. Engine slow.
12.38 a. m. Stopped to discharge pilot.

15.50 a. m. Full speed ahead, set course E. x N.
1.40 a. m. Cape Charles Light abeam, Moderate wind, Smooth sea, fine and clear.

164

7.20 a. m. Wind hauls West with heavy rain squall.
8.0 a. m. Moderate wind and sea; fine clear weather.
10.35 a. m. Sighted steamer on port bow steering to southward, bearing about northeast.
11.14 a. m. Steamer getting close and keeping his course and speed, so in order to try and avoid collision I gave one blast of whistle and altered my course to starboard, other steamer answered by two blasts on whistle.
11.17 a. m. Stop and full speed astern.
11.21 a. m. Collided with steamer Alleghany port bow striking him abaft bridge deck on starboard side.
11.26 a. m. Clear of steamer, stopped engines. Captain gave orders to sound ship, ascertain damage and swing out life boats.
Holds making no water, fore peak full up to sea level. Signalled S/S. Alleghany asking him if he required assistance. He replied not to abandon him so we stood by.
12.10 p. m. S/S. Alleghany proceeded towards shore, so us following him at full speed, steering W. N. W. magnetic. S/S. Alleghany stopped and was seen to be settling down aft and crew taking to life boats.
2.5 p. m. Stopped engines close to sinking steamer. Engines used as required picking up crew out of boats.
2.40 p. m. All the crew and passengers safe on board this vessel. Stood by Alleghany until she sank stern first at 3.20 p. m. in Latitude 37.33 and Long. 74.4 W.

165

3.25 p. m. Proceeding full speed ahead back for Newport News.
4.50 p. m. Stopped to ask S/S. Sabine to report by wireless the above collision and report steamer sunk and all the crew and passengers safe on board this steamer and proceeding to Newport News.
5.5 p. m. Proceeded full speed ahead, course S. 70″ W.
8 p. m. Strong wind and rough sea; fine and clear weather.
9.50 p. m. Revenue Cutter alongside and voluntarily offered to escort us into Cape Henry.
11.50 p. m. Cape Charles Light Vl. abeam dist. 3½ miles.
Midnight. Strong wind and rough sea; fine clear weather. Vessel carefully sounded every fifteen minutes but making no water in holds.

(Sgd.) JAS. GRIFFITHS, *Master.*
W. A. WESTGARTH,
Chief Officer.

By Mr. Burlingham:

Q. I observe in this copy of the log that you have an entry at 10.35 A. M. sighted steamer on port bow, and at 11.14 A. M. steamer getting close, and at 11.17 A. M. stop and full speed astern; were those times by clock or watch?

A. No.

Q. How were you able to fix the time 10.35; by bells?

A. Not that 10.35, because I slipped in the wheelhouse just at that time to get the telescope, and it was half-past ten then.

Q. So you put it five minutes later?

A. Yes.

Q. Are the other times, 11.14, 11.17 and 11.21 by watch or clock?

A. No, just the time of the collision; the other times are guess work.

166 Q. I observe you say 11.14 steamer getting close. Keeping his course and speed so in order to try and avoid collision I gave one blast of whistle and altered my course to starboard. Other steamer answered by two blasts of whistle, and at 11.17 you have the entry "Stop and full speed astern," and at 11.21 "Collided with steamship Alleghany, my port bow striking him about the bridge deck on starboard side." That makes a period of 7 minutes from 11.14 to 11.21 from the time when you say you gave one blast of your whistle until the collision; is that correct?

A. No.

Q. What is wrong about it?

A. The time is too long.

Q. Is it a fact that there was a period of three minutes from 11.14 to 11.17 between the time when you blew your one blast and your engines were put full speed astern?

A. No, that is where the mistake is.

Q. It is correct to say that there were four minutes from 11.17 to 11.21 between the order full speed astern and the collision?

The cross-examination of the witness by Mr. Burlingham is objected to.

A. No, sir.

Mr. Burlingham: Mr. Smith, have you our scrap log?

Mr. Smith: No.

Mr. Burlingham: Do you know anything about it?

Mr. Smith: No, I don't know anything about it.

Q. I showed you a clipping from a Newport News newspaper with regard to the transfer of passengers in the snow storm;

167 I have here now a paper which Mr. Hughes has given me from a Newport News paper which says the collision occurred it is said before 5 o'clock yesterday morning in a driving snow storm but details are unobtainable. Do you recall whether it is this paper or the other one that I showed you, that the German officer showed you?

A. I don't think it was either of them because the copy was in the middle of the page.

Q. What was the substance of the statement?
A. The part of it was about the snow storm and the collision occurred in a blinding snow storm.

Cross-examination by Mr. Kirlin:

Q. When was it that you took the observation that you spoke of having taken while on watch?
A. Just after I relieved the bridge, probably a quarter of an hour or so afterwards.
Q. What hour?
A. Before 9 o'clock, probably quarter of 9.
Q. Did you get a good sight?
A. It wasn't a sight; just the bearing of the sun to find the deviation or the error of the compass.
Q. You were able to ascertain your position by that?
A. No.
Q. At 10.35 according to your memorandum you sighted a steamer on the port bow steering to southward?
A. Yes.
Q. Bearing about northeast?
A. Yes.
Q. Did you take that bearing by the compass?
A. It was not a proper compass bearing; I just glanced over the top of the compass and took a rough bearing.
Q. It was not a guess; you looked at the compass?
168 A. It was not a true bearing, not an accurate bearing.
Q. You looked over the compass at the vessel?
A. Yes.
Q. This was as near as you could come to it without taking a more careful bearing?
A. Yes.
Q. You were at that time steering by compass east by north?
A. Yes.
Q. The vessel was three points on your port bow approximately?
A. Yes; it would be more than that.
Q. It would be three points if that is correct?
A. Yes, if that is correct, if the bearing is correct.
Q. You intended it to be correct when you put it in the log?
A. It was partly what I remembered afterwards that I put in the log book because I didn't take any note of the bearing at the time.
Q. You put it in a good deal nearer the time of the occurrence than to-day?
A. Yes.
Q. That was your best recollection at the time?
A. Yes.
Q. When did you put this down in the log book?
A. Obout 1 o'clock.
Q. The matter was all quite fresh in your mind at that time?
A. Yes.
Q. Are you familiar with the general course of vessels steering to

the southward at that point? Could you judge about what the course of the steamer would probably be?

A. Yes, I could tell that pretty well by the way he was coming down.

Q. What did you think he was steering?

A. About south.

Q. You were approaching one another within one point of a right angle?

A. About that I should say.

Q. You kept on as I understand you for about three-
169 quarters of an hour without making any changes at all or giving or receiving any signal?

A. Yes.

Q. Did you watch the bearing of the other vessel?

A. Yes, just roughly.

Q. During this three-quarters of an hour?

A. Yes.

Q. Did she still continue to bear northeast from you?

A. Practically; she did not alter the bearing at all.

Q. Did you remain on the bridge all the time?

A. Yes.

Q. Were you watching the vessel attentively all the time?

A. Yes.

Q. When did you begin to use your glass on her?

A. Probably when seven or eight miles away; I looked at her first of all with the glass to see what it was.

Q. Did you recognize what it was?

A. Yes.

Q. That you did before the collision?

A. Yes, sir; 4 or 5 miles away I could see it was a steamer with a yellow funnel; I couldn't see his name until he got 2 or 3 miles away.

Q. Did you recognize what line she belonged to?

A. No; I thought she was a Hamburg-American Line because I had seen so many of them, but she had no distinguishing mark at all except the funnel.

Q. When she got to about a mile off you first considered there was risk of collision?

A. Yes.

Q. Then you blew one blast of the whistle?

A. Yes.

Q. A short blast?

A. Yes.

Q. And immediately ordered the man at the helm to port?

A. Yes, a little.

170 Q. You did not wait to get any reply before you ported?

A. No.

Q. You did not get a reply?

A. I did a little later.

Q. Not before you ported?

A. No, not before I ported; I ported about a point when I gave the one blast.

Q. You say about a point?

A. Yes.

Q. Did you look at the compass?

A. No, sir.

Q. You just estimated after she did swing around, about a point?

A. Yes.

Q. You did something else; what did you do?

A. After she had swung around?

Q. Yes.

A. I did nothing until after I heard him give two blasts of the whistle.

Q. Then what?

A. Full speed astern.

Q. According to your log three minutes elapsed from the time you blew the one blast whistle and ported until you gave the order to stop and full speed astern; was that as near right as you could make it at the time you put the entry in the log?

A. Yes, because I didn't think much about times as they were then.

Q. When did you begin to think further about it?

A. After I had gone through with the case I looked at it and saw it was—it was the captain called my attention to it first of all and asked if I thought it was not too long a time.

Q. When was that?

A. Probably a day or two after we were in Newport News.

Q. Was that after you had gone through the case?

A. No, we had not gone through it at all; he asked me to let him have a look at my log book to see the account I had put in about the collision.

Q. The captain was not on the bridge?

A. No.

Q. He had not any knowledge at all how long it was?

171 A. No, sir, but he asked me the question; I got that down as 11.14 and 11.17, and I knew when the captain asked me, when it was pointed out to me 11.14 that it was not that time; it was about a minute, and when I thought over it I wondered if I had made a mistake taking that from the scrap log book, made a mistake in the 11.14 and 11.17 in the scrap log; we could not find the log to ascertain whether it was right.

Q. What reasons had the captain to think the interval of three minutes was too long?

A. He just passed the remark "Was it three minutes from the time you blew the whistle until he answered you," and I said, "No"; he said, "You have it here," and I said, "It must be a mistake"; that is how it came about that my attention was first called to it.

Q. It did not occur to you there was any mistake about it until someone else suggested it?

COPY BOUND C

A. I had not noticed it, that I had 11.14 and 11.17, not to take notice of the time intelligently.

Q. Is there any other signal that you know of that is ordinarily used by a vessel to call attention of another vessel, to the fact that a dangerous situation is arising and something needs to be done to avoid collision?

A. Not in the rule of the road, no, sir.

Q. Don't navigators use what is called a danger signal at all?

A. No.

Q. Do you know of such a thing as an alarm signal?

A. No.

Q. At the time you got the two blasts back from the Alleghany you gave the order hard-a-port.

A. Yes, full speed astern and hard-a-port.

Q. Had you given any order to the helmsman between the time you ordered him to port a little and the time you ordered
172 him to hard-a-port?

A. No.

Q. Said nothing to him?

A. No.

Q. So that whatever porting he had started to do was still going on at the time you ordered him hard-a-port? ?

A. Practically, yes, sir.

Q. Did you notice the compass at any time from the time you gave the first order to port a little until the collision?

A. No.

Q. Did you notice that after the collision?

A. I can't say I did, not exactly afterwards, up to 5 or 10 minutes after.

Q. Have you any idea how much your ship's head swung under the porting and backing orders?

A. I should think about three points.

Q. Please place these two models so as to show the angle at which the vessels came together?

Witness does as requested.

Q. Mark the compass bearing of the vessels as nearly as you can give them at the moment of collision?

Witness does as requested.

Q. Did you take the time of the collision?

A. The way I got the time of the collision, I did not look at the clock but our bell was struck at 20 minutes past 11 and the collision was just as the bell was finished striking or a moment or so afterwards.

Q. The engine room department must have some record?

A. The chief has it.

Q. Did you compare the times with them?

A. I got the time the engines were going astern from the chief;

CLOSE IN CENTER

from the time I rang the telegraph until the collision I as-
173 sumed how long the engines were going astern.

Q. And he gave you the time 11.17 as the time of stopping and reversing?

A. Yes.

Q. And he told you he felt the shock at 11.21?

A. The chief engineer told me the engines were going astern about four minutes.

Q. Those two times are not your estimates?

A. The time the engine is going astern is the time I got from the chief and the 11.21 is practically the time by the wheelhouse clock, and took the four minutes from that.

Q. Do you know whether the clocks were together?

A. I couldn't say; there is generally a few minutes difference between them, as a rule.

Q. When did you look at the clock with reference to the collision?

A. I didn't look at all; seven bells struck at 20 minutes past eleven and it was shortly after that.

Q. Who struck the seven bells?

A. The ordinary seaman we had.

Q. An extra man?

A. Yes, just a boy, his first voyage to sea.

Q. Why is the bell struck at 11.20?

A. To give the watch coming on deck time to get their dinner before 12 o'clock; that is the general rule; the same 20 minutes past 7 they strike the bell so the men can get their breakfast before they come on deck at 8 o'clock.

Q. Do you still adhere to your belief that the vessels were a mile apart at the time you blew the one blast signal?

A. Yes, about a mile away.

Q. You were proceeding at about 9 knots?

A. Yes.

Q. You were making about a mile in a little less than 7 minutes?

A. Yes.

174 Q. You just got seven minutes here as the time between the time in which you say you blew the one blast whistle and the time you set down for the collision, so that would be approximately correct, wouldn't it?

A. Yes.

Mr. Burlingham: That depends; the difference between the straight line and the hypothenuse——

Q. (Repeated.) You got just seven minutes here as the time between the time in which you say you blew the one blast whistle and the time you set down for the collision, so that would be approximately correct, wouldn't it?

A. If it was seven minutes from the time I blew the blast the ship had not done the mile because the Alleghany was further away from us at the angle——

Q. Before Mr. Burlingham told you anything about the difference between a straight line and a hypothenuse you said yes in answer to that question?

COPY BOUND

A. If the ship had done a mile in seven minutes——
Q. Didn't you answer that question yes at first?
A. I didn't quite catch what you said.
Q. You said yes to it, didn't you?
A. Yes, I believe I did; I thought you meant the ship was a mile away from us at the time I gave the blast.
Q. Did you examine the vessel through your glass at about the time you blew the one blast signal?
A. Yes.
Q. Did you look at the bridge of the vessel?
A. Yes.
Q. Did you have it in your mind at that time there was not anybody on the bridge?
A. Yes, it struck me because I had been watching before
175 and I couldn't see anybody walking about.
Q. Did it cross your mind before that, that there wasn't anybody on the bridge?
A. I couldn't see on account of the dodger being up there; there might have been someone on the corner.
Q. The dodger would not be up high enough so a man could not see over it?
A. If a man was standing back—the dodger comes up probably to his chin.
Q. When you got within a mile you could see pretty plainly?
A. Yes.
Q. You could see then that there was nobody there?
A. No.
Q. In that posture of the matter you blew one blast and ported?
A. Yes.
Q. Without waiting for anybody to come out?
A. Yes.
Q. Did you see anybody come out?
A. Not until we were probably quarter or half a mile from the ship that I saw two or three come running along the deck.
Q. That was the first time you saw anybody come out?
A. Yes, the first time I saw anybody on the deck.
Q. Was that before or after you got the two blasts from them?
A. After I got the two blasts from them.
Q. Who was it blew the two blasts?
A. As far as I could make out it was someone went on the bridge and blew it.
Q. You said you saw them come on the bridge?
A. No, I didn't.
Q. What did you say?
A. I said I saw two or three come on the deck, half a dozen or more came on the deck after he had blown the whistle.
176 Q. Did you see anybody come on the bridge at all?
A. I saw them shortly after they blew the whistle.
Q. After they blew or you?
A. After he blew.
Q. Shortly after the two blasts were blown you saw someone?
A. Yes.

CLOSE IN CENTER

Q. How far were the ships apart then?
A. Half a mile or less, quarter of a mile.
Q. How far were the ships apart at the time the other vessel blew the two blast signal?
A. About half a mile; might have been a little more.
Q. How far do you think they were apart at the time you reversed the engines?
A. As soon as he gave the two blasts I reversed the engines; might have been a few hundred feet or so——
Q. Still approximately half a mile?
A. Yes, or less.
Q. Be as specific about that as you can?
A. That is my best judgment, she was about half a mile away at the time.
Q. When you began to back?
A. Yes.
Q. And when you hard-a-ported?
A. Yes.

A diagram made by the witness is offered in evidence and marked "Yang-tsze Exhibit B (Westgarth) of June 7, 1912."

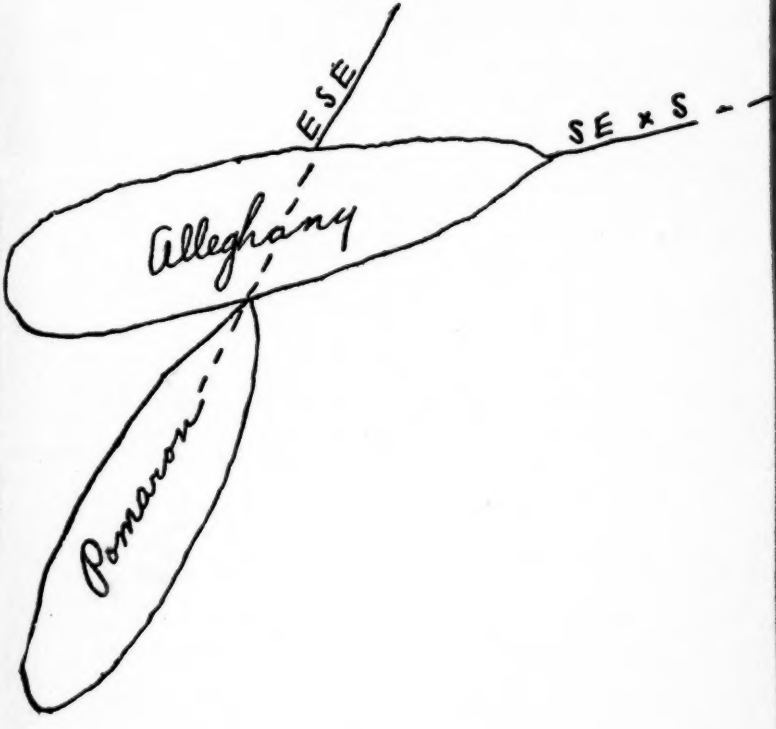
Q. At what point in the approach of the vessels did you consider the collision became unavoidable?
A. As soon as he gave me the two blasts of the whistle.
Q. They were then approximately half a mile apart?
A. Yes.
Q. Have you ever had occasion to notice how long it takes to stop the Pomaron by backing her engines?
A. Yes.

(Here follows diagram marked page 177.)

COPY BOUND C

Yang-tsze Exhibit B (Westgarth)

June 7, 1912.



CLOSE IN CENTER

COPY BOUND CL

178 Q. When she is going full speed?

A. Yes.

Q. What observations have you made on that subject?

A. To bring her to a dead stop it would take about 5 minutes or so.

Q. What observations have you made about it; when have you ever noticed that?

A. When we have been coming into port, or taking up a pilot.

Q. You think it would take as long as 5 minutes?

A. Yes, probably well up to 5 minutes, but I never have timed it really.

Q. How many lengths will she travel before she comes to a standstill after reversal from full speed ahead to full speed astern?

A. I couldn't say exactly how long it would take before the headway would be off.

Q. Do you think she would run more than three or four of her lengths?

A. More than that.

Q. How much more?

A. I don't suppose she would run much more than five or six ship lengths; she might run a little more but I never have actually taken any notice how long it does take.

Q. You did not at any time see any indication of the Alleghany that her navigators intended to go under the stern of your ship?

A. No, sir.

Q. In that condition of affairs you easily could have avoided collision when you saw there was risk by stopping earlier, couldn't you?

A. It was not my place to stop earlier until we were so close that collision could not be avoided by the action of the Alleghany alone.

Q. You considered there was danger a mile off and nobody on the bridge and the bearings had been the same for half an hour?

A. Yes.

Q. That was clear evidence of danger to you?

A. Yes.

179 Q. Clear indication that there would be a collision unless someone did something?

A. Yes.

Q. Instead of porting which threw you across the path of the other vessel you could have easily avoided collision by stopping as you now see it?

A. If I had stopped sooner it certainly would have avoided collision, but then it was not my place to.

Q. There was nobody on the bridge to change the course of the other vessel?

A. There might have been someone keeping lookout some other part of the ship; in the wheelhouse or chart room.

Q. The navigation is ordinarily done from the bridge?

A. As a rule, yes, sir.

Q. It was not being done from the bridge of the other vessel as she came up to you and you knew it?

LOSE IN CENTER

A. As far as I found out since.

Q. You knew it at the time?

A. I knew there was no one on the bridge as far as I could see, although there might have been someone keeping lookout on some other part of the ship.

Q. Have you ever made any observations as to the time that it takes to swing your vessel a point or two by porting when you are going full speed ahead?

A. No, I have never taken any time.

Q. Is she a quick or slow steering vessel?

A. When she is going full speed and you put your helm hard over she comes around fairly quick.

Q. How soon will she begin to swing after you port the helm?

A. Quarter of a minute or less than that if you put it hard over, but if you put it over a little way it will take longer, she will come very easily.

Q. She will begin to swing almost immediately?

A. Yes, if you put the helm hard over.

Q. How fast will she swing, how long will it take to swing two or three points?

A. Not very long to swing two or three points if you had
180 it hard over.

Q. When the other vessel gave you two blasts on the whistle what did that indicate to you?

A. That he was going to put his helm to starboard and try to cross ahead of me.

Q. He was half a mile off then?

A. Yes.

Q. Or approximately so?

A. Yes.

Q. Wasn't there plenty of time for you to starboard at that time and go under his stern?

A. No.

Q. You could swing two points in half a mile?

A. Not the way he was swinging around at the same time.

Q. His boat was not a very long boat, was it?

A. No, sir, about 300 feet.

Q. Her stern would not have swung a great deal; she only changed her heading altogether about three points according to your estimate; if you were half a mile off, and had distinct notice that the other vessel was starboarding her helm; wasn't it within your power to avoid collision by starboarding your helm instead of porting it?

A. I don't think so.

Q. Don't you think so now?

A. No.

Q. If you had not begun to port before that you would not have continued when you got the two blast signal?

A. I should never have starboarded.

Q. At the distance of half a mile?

COPY BOUND CL

A. No, not after he answered my one blast signal like that and gave me two.

Q. Giving two notified he was going away from you?

A. He couldn't in time though.

Q. You want to go on record as stating with a vessel half a mile away from you, having given you two blasts indicating she
181 was going to starboard her helm, that you could not starboard your helm and swing off two points to port?

A. Might do it.

Q. At the time the vessel was half a mile away when she gave the two blasts what was her bearing from you?

A. How many points on the bow?

Q. Yes.

A. Probably about four points, three or four points on the bow.

Q. She was a faster vessel than you were?

A. Yes.

Q. She was only three points on your bow to begin with?

A. Yes.

Q. She could not have been many more unless you increased the distance by porting; do you think she was four points on your bow?

A. Three or four points; I didn't bother to take any bearings at all.

Q. Starboarding two points would have cleared her, wouldn't it?

A. I hardly think it would; it might have.

Q. She was going ahead all the time?

A. Yes; we were going ahead at that time as well.

Q. That would give you better steerage way?

A. But it would bring us pretty close together before we got around.

Cross-examination by Mr. Kneeland:

Q. Did you send the steward to call the captain?

A. Yes.

Q. Where was the steward?

A. Outside the galley at the fresh water tank getting some fresh water.

Q. Did you sing out to him?

A. Shouted out from the bridge; it is only 30 or 40 feet from the bridge.

182 Q. He was forward of you?

A. No, abaft of me.

Q. When was it that you told the steward to call the captain?

A. About—I don't know the exact time, but about the time I gave the one blast, then I saw the steamer was getting pretty close to us, that I gave the one blast.

Q. Before she had blown two?

A. Yes.

Q. How long before?

A. It wasn't very long, in fact I forgot whether it was before I had given the blast or after I had given the blast; I think it was after I had given the blast and after the Alleghany had given two

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blasts; if I remember right I think that was the time I shouted out to the steward, because up to that time I thought there was no necessity of calling the captain.

Q. The steward had to go way aft and call the captain?

A. Yes.

Q. Had you reversed your engines before you sent the steward?

A. I think I must have; I am not quite certain; it all depends—the blast and reversing of the engines were all within a minute or so, about a minute; whether it was before or after—I think it was after that that I sent the steward to call him.

Q. How long was it after the two whistles were blown by the Alleghany that you reversed?

A. As soon as he gave the two whistles, as soon as I heard them.

Q. It was after that that you went and called the steward and told him to go aft and call the captain?

A. Yes.

Q. He had to go way to the stern of the ship?

A. Yes.

Q. Could you judge the comparative speed of the two vessels as you watched the Alleghany approach?

183 A. I could see she was going much faster than us.

Q. How much faster was she going than you were?

A. Three or four knots at the time faster; that is, according to the speed the other steamer was going; they generally average about that speed.

Q. As she continued to approach you you could form an estimate of how fast she was going, couldn't you?

A. Only roughly.

Q. Then it was quite certain she was coming faster than you were?

A. Yes, much faster than us.

Q. You saw her first about three points on your port bow bearing about northeast?

A. Yes; perhaps she was more than that; if I had taken a correct bearing——

Q. It might have been less if you had taken a correct bearing?

A. Yes.

Q. When she was half a mile away she was then not more than three points on your port bow?

A. She was about that.

Q. And at that time you changed your course how much to starboard?

A. About a point.

Q. So she was continually getting across your bow?

A. Closing in very quickly on us; the bearing was hardly changed at all until we got too close to be safe.

Q. The bearing at least had changed a point between the time you first saw her and the time she was half a mile away?

A. I don't think it had.

Q. If you changed a point to starboard and the bearing on both occasions was three points it seems she had closed up one point?

COPY BOUND C

A. It would have been more than that; she must have been more than the angle we struck at.

184 Q. The angle you struck at was after he had changed further and after you had changed?

A. Yes.

Q. If you have a vessel going faster than you are running almost at right angles with you and she bears three points on your port bow, if you both keep your courses she will cross you in safety?

A. If she is at right angles, yes, sir, but she was not at right angles at all.

Q. She was very close at right angles?

A. That is only a rough bearing.

Q. You said she was steering a course of south?

A. Yes.

Q. You were steering east by north compass, course?

A. Yes.

Q. In regard to these times entered in your scrap log I understand you first had some doubt raised in your mind as to whether there were three minutes between your blowing your one whistle and her blowing her two and your reversing?

A. Yes.

Q. And it was the captain who called your attention to that?

A. Yes.

Q. Did he tell you that was a very material fact in the case?

A. No, he just pointed out to me that the times—he was reading them through and came down to 11.14 and said, "Is that right," and I said, "No, I must have made a mistake."

Q. You recognized the minute he called your attention to it that it was a very important point in the case?

A. I didn't take much notice of it at the time, no sir.

Cross-examination by Mr. Harrington:

Q. When the captain called your attention to this time he said, did he not, that that was a pretty long interval to have in

185 there?

A. No, he didn't pass that remark at all; I forget exactly the conversation that did take place between us.

Q. As I recall your first testimony on the point, you said as I recall it, that the first time you noticed this interval which you now say was a mistake, was when the captain pointed out to you and asked if it was as long as that or some such words as that, isn't that right?

A. Did I say that this morning?

Q. My recollection is you said something of that sort but I am not sure.

Mr. Kirlin: Yes, he said that.

By Mr. Kirlin:

Q. That is, you had not noticed it until the captain asked you about it?

A. Yes, sir.

LOSE IN CENTER

By Mr. Harrington:

Q. The point I wish to make is when the captain did call your attention to it he pointed out that it was a rather long interval, isn't that so?

A. No, that was not my meaning at all.

Mr. Burlingham: He said the captain asked if it was right.

Q. You don't know why the captain asked whether that was right?

A. No, sir, I had no idea at all why he asked; it was the first time he saw my log book and he said, "Are you sure these times are right," and when he was running them down, when he got to this I said——

Q. Tell me in what place were you looking at this entry; in the scrap log or in your chief officer's log?

A. In my chief officer's log.

186 Q. Not in this thing you have written off?

A. No, in my log book.

By Mr. Kirlin:

Q. Had you written this up before the captain spoke to you about it?

A. No, that was after.

Q. Which was after?

A. This was after.

Q. That you made the copy?

A. Yes.

By Mr. Harrington:

Q. You took this off after the captain pointed it out to you?

A. Probably ten days or a fortnight after.

Q. Ten days or a fortnight later you took this copy?

A. Yes.

Q. So that before your captain called your attention to the long interval you had entered it in the scrap log at one o'clock after the collision and then after you got to Newport News had transcribed that from the scrap log into your chief officer's log?

A. Yes; that is why I said it must have been a mistake copying that from the scrap log into my log book; I had the chief officer's log book; when we both went down these times together I could see at once it was not three minutes from the time I blew the whistle until he answered, because it would not take that long to get from the chart room or wherever he was, up on to the bridge, and when I came to think over it afterwards it was not immediately, but a very short time afterwards.

Q. How far was the Alleghany when you first sighted her?

A. 10 or 12 miles away I should think.

Q. At a bearing of northeast?

A. Yes.

COPY BOUND C

187 Cross-examination by Mr. Smith:

Q. It is more risky for your bow to strike another vessel or to have the other vessel's bow strike you?

A. More risky for us—how do you mean?

Q. Is it more dangerous for the Pomaron to come head on into the Alleghany amidships or to have the Alleghany come head on into the Pomaron amidships?

A. For us, it is more dangerous to have the Alleghany come into us like that.

Q. So that by porting ahead it would be more dangerous for you than to starboard and try to go astern of her?

A. We were too close then at the time I took action—we were too close for me to starboard; I didn't know up to the time we were a mile away, I expected all the time to see him port and come under my stern, and when he didn't do that he was getting too close.

Q. You executed the manoeuvre you thought was most likely to prevent any collision whatever?

A. Yes.

Q. As regards the risk of the two vessels at the time you made the manoeuvre did you have it in mind it was more risky for you to be struck by the Alleghany than it would be for you to strike her with your bow?

A. Not at the time, I didn't think about that.

Q. Is that a principle of seamanship that is in your mind, that you realize?

A. Yes, it would be better for us if he could strike us on the bow.

Q. That is fundamental in seamanship?

A. Yes.

Redirect examination by Mr. Burlingham:

Q. Do you think you would have a right to depart from the rules of the road in order that you might not be struck in a
188 certain way?

A. Not until we were too close and collision could not be avoided by the giving way of the vessel alone.

Q. You said to Mr. Smith just now that you expected every moment that the Alleghany would port her helm and go under your stern?

A. Yes.

Q. Would you have thought it safe before she blew her two blasts for you to stop your engines and reverse them?

A. Did I think it safe, no, sir.

Q. I understood you to say to Mr. Kirlin that when the Alleghany blew two blasts you thought a collision could not be avoided, is that so?

A. Yes.

Q. What did you think about the possibility of collision when you blew one blast?

A. My thoughts at the time were that if he had blown one blast

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and altered his course to starboard, if he had ported his helm he could have gone under my stern.

Q. But that if he had not, what?

A. A collision surely.

Q. Would it have been safe for you to starboard your helm?

A. No.

Q. In that situation with no change of bearing of the other vessel what did that indicate to you?

A. That there was danger of collision.

Q. Is there anything in the rules about that?

A. Yes, there is an article in the rules about it.

Q. What is the rule in regard to that?

A. Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of the approaching vessel. If the bearing does not appreciably change such risk shall be deemed to exist.

Q. That is in the International Regulations?

A. Yes, that is the first part of Article 17.

Q. You have not learned it for this occasion?

A. No, sir, I have known it since I was on the——

189 Q. Of course you recognize, you know that under the International Rules, having the Alleghany on your port hand it was your duty to maintain your course and speed?

A. Yes.

Q. You did maintain your speed, did you?

A. Yes, right up to the time I received the two.

Q. Until you thought collision was inevitable?

A. Yes.

Q. But you changed your course?

A. Yes.

Q. Why?

A. Just to give the Alleghany a little more clearance.

Q. Did you think there was possibility of collision then?

A. No, sir, not at that time, not if he had ported his helm, there would have been no collision at all.

Q. If he did not?

A. If he did not do something there would be a collision.

Q. Is it a fact that between 11.17 and 11.21, that is, during the four minutes between the order to reverse your engines and the collision you were proceeding at a rate of 9 miles an hour?

A. Not the whole time, no, sir.

Q. Would you venture to say what your speed was minute by minute during that four minutes?

A. I suppose the first minute she would not have taken much headway off; she would be going about 9; during the second minute she might have taken two knots off the speed.

Q. The third minute?

A. Another two, or a little more, probably 2½.

Q. And the fourth?

A. About the same.

COPY BOUND C

Q. What would that bring her down to at the moment of collision?

A. Not more than two knots.

Q. Is this based on any experience?

A. Just the time I have seen it take to come to a standstill.

Recross-examination by Mr. Kirlin:

190 Q. Have any tests been made since this collision of the manœuvring capacity of the Pomaron?

A. No.

Q. Either as to length of time it would take to stop her or the distance she would travel in stopping or the time she would require in turning?

A. No.

Q. No experiments of any kind have been made?

A. No, sir, not to my knowledge.

Q. In order to get the matter quite plain on the record will you tell us when it was that in your judgment the circumstances had developed so that collision became unavoidable unless you did something?

A. Really not until the Alleghany had given me two blasts on the whistle.

Q. Up to that time you had appreciated risk of collision from the time you blew your first whistle?

A. Yes.

Q. But you thought it might have been avoided by the other vessel until she gave you two blasts?

A. Yes.

Q. Then she was half a mile away from you?

A. Yes.

Q. Bearing about three points as I understand you on your port bow?

A. Yes.

Q. Then it became under the rule your duty to do something?

A. Yes.

Q. It had not been your duty to do anything before that?

A. No, sir.

Recross-examination by Mr. Kneeland:

Q. You stated you departed from the rule which required you to keep your course?

A. Yes.

191 Q. Having the other vessel on your port bow?

A. Yes.

Q. In order to give her more room?

A. Yes.

Q. You realize if you had not ported your wheel the collision would have not occurred?

A. Yes, it would have; she would not have crossed our bow.

Q. In spite of the fact you having changed your course to star-

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board at least a point, and that you ran for anywhere from 5 to 7 minutes?

A. Yes.

Q. And that you struck her aft of the engine?

A. Yes.

Q. Having that in mind do you think collision would have happened if you had not ported your helm?

A. Yes, it would have happened in any case; she would have caught us somewhere probably about amidships if I had not ported.

Q. Even if she had starboarded?

A. If he had gone hard-a-starboard and gone right around he would have cleared us if he had done it in time, but he could not have crossed our bows.

By Mr. Kirlin:

Q. You don't know how much you had ported before you began hard-a-porting?

A. Probably very little; as far as I could judge it might have only been a point, and it might not have been.

Q. You had been porting at least a minute according to the correction you have attempted to make this morning, but according to the log you had been porting three minutes before you hard-a-ported?

A. Yes, but the helm was steadied previous to that; the helm was just ported a little and the man at the wheel would see the ship swing off and steady up again.

Q. You said you did not say a word to the man about steadying?

A. No, I didn't.

192 Q. You don't mean to say the man did steady from anything you saw?

A. No, sir, not anything I saw, but as a rule, they do that when you say port a little.

Q. We don't want to take any rule; are you in a position to make oath that your ship had not swung two points under this porting before you gave the order to hard-a-port?

A. No, sir, she wouldn't swing two points; if she swung a point it would be as much as she did; you can pretty well tell for that matter how far she does swing.

Q. You did not have any object in front of you by which you could measure the angle?

A. No, but you could see her wake; the wake had not altered much.

Q. You were giving pretty close attention to the other ship, weren't you?

A. Yes, I was watching through the glass, but you can look back at the same time; I was looking to see if there was anybody about to send for the captain when she was getting as close as that.

Q. You did not make an entry in your log about how much of a swing it was?

A. No.

Q. Did you have anything in the scrap log about that?

COPY BOUND C

A. I don't think so; if I had it in the scrap log I should put it n mine.

By Mr. Kneeland:

Q. Where was the steward?
A. On the starboard side.
Q. The man you actually found was not on the side the vessel was, but on the starboard side?
A. Yes.

193 By Mr. Harrington:

Q. You figure the Alleghany was a much faster vessel that you were?
A. Yes.
Q. You made your observation of her as she approached; you could see that that was so?
A. Yes.
Q. You know you were making about nine knots?
A. Yes.
Q. I suppose you figure she was making 12 or 13?
A. Yes.
Q. You realized that at the time she was a mile away?
A. Yes.
Q. At that time she was at a bearing not more than three points on your port bow?
A. It would be sure to be more than three; that is down in the log book.
Q. The testimony offered has been it was a bearing of three points on your port bow when she was a mile off?
A. Yes.
Q. You then realized she was making 12 or 13 knots an hour?
A. Yes.
Q. At that time could you see with your glass that there was no one on her bridge?
A. Yes.
Q. Up to that time it was plain to you she was on a southerly course?
A. Yes.
Q. Steering about south?
A. Yes.
Q. And up to that time there was no indication whatever on her part of any intention to change, to go under your stern?
A. No.
Q. Everything indicated she was steering a southerly course straight and intended to keep it?
A. Yes.
Q. It was in that situation that you blew one whistle and ported your helm?
A. Yes.
Q. The man at the wheel was an apprentice?
A. Yes.

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194 Q. Probably on his first trip?
A. No.
Q. You gave no order to steady after the order to port?
A. No.
Q. And you don't know whether he steadied or not?
A. No.
Q. You ran at the same speed of nine knots a distance of half a mile?
A. Yes.
Q. The Alleghany continued on her southerly course?
A. Yes.
Q. Heading precisely as she had been all the time you observed her?
A. Yes.
Q. It was still plain to you there was no one on the bridge?
A. Yes.
Q. And your one whistle signal remained unanswered?
A. No, she answered by two blasts.
Q. You blew your one whistle signal when you were a mile apart?
A. Yes.
Q. You ran a distance of half a mile, you reduced the distance between you half a mile with this apprentice carrying out the order to port the helm and the Alleghany continuing on her course faster than you were?
A. Yes.
Q. With no one on her bridge and your one whistle signal unanswered?
A. Yes.
Q. When the vessels are half a mile apart the Alleghany bears still three points on your port bow?
A. Yes.
Q. And it was then that you got the two whistle signal from her?
A. Yes.
Q. That of course was a positive indication to you that she was going to starboard her helm and continue on across your bows?
A. Yes.
Q. And then it was that you put your helm hard-a-port and kept it there until you struck?
A. Yes.
Q. You struck her abaft the engine room?
A. Yes.

195 Q. Isn't it perfectly plain to you that if at the time you sighted the Alleghany at a three point bearing on your port bow a mile away, going as you knew at 12 or 13 knots and you were only making 9, that if you had held your course as you were required to do by the rule, that she would have passed you in safety before your courses intersected?
A. She would not have done it; that is where I made a mistake in taking the bearing by the compass of the Alleghany.

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By Mr. Burlingham:

Q. You think the northeast bearing mentioned in the log is not correct?

A. No, it can't be correct.

Q. How many points do you think you should have her on your port hand?

A. It should have been 5 at least, I should say.

Q. All these questions and answers are based on a three point bearing instead of five points?

A. So I understood because they were taken from the log book; I am answering my questions as the Alleghany approached us just as I remember it without any compass bearing or anything of that kind.

Q. What is your recollection as to what her bearing was when you first saw her?

A. She would be five points, four or five points on the bow.

By Mr. Kneeland:

Q. When she was 10 or 12 miles away?

A. Yes.

By Mr. Burlingham:

Q. And you say it did not change?

A. Did not change.

Q. That is what you said on your direct examination in answer to my question?

A. Yes.

196 Q. When Mr. Kirlin called your attention to the entry in your log that when seen she was northeast, then it worked out three points?

A. Yes.

Q. Is that correct or is the first correct?

A. The first is correct, but I was answering Mr. Kirlin according to the log book.

By Mr. Kirlin:

Q. I ask whether you did not make the entry in the log book of the bearing as you actually thought it was at the time and you told me you did after looking over the compass?

A. I did not take a bearing; I did not notice the bearing; I just walked to the compass and looked over the top of the compass, because the compass is amidships, and by taking, as I very often do, a rough bearing of anything by the stanchion, you can tell whether she is within a point or a couple of points or where she is.

Q. You must have thought at the time she was bearing northeast or you would not have put it in the log?

A. In a northeasterly direction, but whether northeast by north I could not swear at all.

Q. Didn't you put it in your log the way you actually thought it was at the time according to the observation you made across the compass?

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A. It was just a rough estimate of the point that I thought.

Q. You had a compass in front of your face when you were looking at the other boat?

A. I didn't take a bearing from the compass but looked over the top of the compass and I didn't take any particular notice of the point at all.

Q. Looking over the top of the compass you judged the vessel bore from you northeast?

A. Not at the time I didn't.

197 Q. You put it in the log that way?

A. Yes, I put it in the log that way afterwards.

Q. You put it in the log at one o'clock?

A. Yes.

Q. Wasn't that your best judgment at the time of the bearing of that ship when you saw her?

A. I don't think it was.

Q. Do you mean to say you would have put something in the log book which at the time was not your judgment as to the truth of the item you were putting in?

A. As far as I could judge as to the point, but I never worked it out to see how many points she was.

Q. The only reason you doubt it is now you see if she had been bearing the way you put it in the log and both vessels had steered in the direction you say they were steering, and with the speed you thought each of them had there would not have been any collision unless you had ported?

Mr. Burlingham: Objected to.

Q. Isn't that so?

A. It was inevitable that there would be a collision the way she was coming; I couldn't go by the bearing at all; if I had taken a proper compass bearing, but I didn't.

Mr. Burlingham: I wish to call attention of counsel to the fact that the entry does not say northeast, but "about northeast," and all your questions have been based on a northeast bearing.

198 CHARLES JOHNSON, being duly sworn and examined as a witness for the Pomaron, testifies as follows:

By Mr. Burlingham:

Q. You are the chief engineer of the Pomaron?

A. Yes.

Q. And have been how long?

A. I have been with the ship ever since she came out new, 4½ years ago.

Q. You have held chief's certificate how long?

A. 16 years.

Q. How long have you followed the sea?

A. 23 years.

Q. Have you been chief engineer of other vessels?

A. Yes.

COPY BOUND C

Q. How long?
A. 17 years.
Q. How old are you?
A. 43.
Q. When did you go on duty on the morning of February 2nd?
A. 8:30 A. M.
Q. And did you remain on duty until after this collision?
A. Yes, I was on at the time of the collision.
Q. How many engineers do you carry?
A. Three.
Q. Was anybody on duty with you?
A. No.
Q. Divided into three watches?
A. Yes.
Q. Did you have any oilers or donkeymen?
A. Yes, the donkeyman was greasing, on watch.
Q. The collision occurred at what time?
A. 11.24.
Q. By the engine room clock?
A. Yes.
Q. Up to that time how had the engines been running, during the morning?
A. Under orders of full speed.
Q. What head of steam?
A. 180 pounds.
199 Q. What are you allowed?
A. 180 full boiler pressure.
Q. How many knots were you making?
A. Nine knots about on 61 revolutions; that is about the speed of the Pomaron, loaded ship.
Q. That is her speed when she is loaded?
A. Yes.
Q. Had you been on deck or looked out at all?
A. Yes, I was on deck shortly before 11 o'clock.
Q. How was the weather then?
A. Fine and clear.
Q. Did you go out on deck?
A. I went to my berth; I went for the indicator at the time.
Q. You were gone how long?
A. I returned to the engine room with the indicater from my berth about 11.
Q. How long were you out of the engine room?
A. Probably about 5 or 10 minutes.
Q. Do you mean these cards?
A. Yes, I was going to take diagrams.
Q. Then you remained in the engine room until after the collision?
A. Yes, I remained in the engine room until 12.15.
Q. Have you your log here?
A. No.
Q. Have you an abstract of it?

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A. Yes.

It is produced.

Q. Can you remember what orders were received in the engine room prior to the collision?
A. Stop, full speed astern.
Q. Did they come separately or in a heap?
A. Both together, practically both together.
Q. Did you obey the order?
A. Yes.
Q. Were you near the throttle valve?
A. I was in the after end of the engine room at the time.
200 Q. Did you obey it at once?
A. Yes, at once, stopped the engine and reversed it.
Q. Full speed?
A. Yes.
Q. How long were you reversing before the collision?
A. About four minutes.
Q. Did you take that by a clock?
A. By the engine room clock.
Q. Did you enter it on the slate or blackboard?
A. On the slate.
Q. From that was it transcribed into the log?
A. Yes, I copied it from that into the log.
Q. You did it yourself?
A. Yes.
Q. (Handing witness paper.) Is this a copy of your log entries for that day?
A. Yes, that is right.
Q. Independently of that log have you a recollection of the time when the order was given to stop and reverse?
A. Yes, I distinctly know it was 11.20 by the engine room clock, I was standing facing the clock.
Q. Can you tell by independent recollection at what time, the hour and minute, the collision occurred?
A. Yes, I was standing facing the clock at an angle of 40 degrees.
Q. What time was it?
A. About 11.24.
Q. Did you feel the shock?
A. Yes.
Q. Was it a severe shock?
A. Well, it was moderate.
Q. How long did you continue under reversed engines after that?
A. About five minutes.
Q. Have you had any experience as to the way the ship acts going at full speed, and then an order to reverse?
A. She is generally slow in coming astern.
Q. How long will it take to get her way off under those
201 conditions?
A. Under those conditions about four minutes.
Q. Do you know from experience how far she would move from

being at full speed and getting an order to reverse before she would come to a stop, how many lengths or yards?

A. I couldn't say that.

The extract of the engineer's log is marked for identification "Pomaron Exhibit 9 of June 7, 1912," and is hereto annexed (see next page).

Cross-examination by Mr. Kirlin:

Q. Has the steamer triple expansion engines?

A. Yes.

Q. Of what horse power?

A. About 1,000 indicated.

Q. That is the actual horse power as developed?

A. Actual horse power as developed, yes, sir.

Q. 180 pounds of steam?

A. Yes.

Q. Normal full speed revolutions in order to attain nine knots loaded ship is how much?

A. 61 revolutions.

202

S. S. Pomaron from Baltimore Towards Leith.

Chief Engineer's Log, 2nd Day of February, 1912.

Hours.	Engineer's watch.	No. of boilers.	No. of fires.	Pressure by steam gauge.	Vacuum gauge.	Stop valve.
1	12 to 2 a. m. stood by. 12.40 a. m. stop, discharged pilot. 12.53 a. m.					
2	full speed ahead.					
3						
4	3	2	4	180	26	F
5						
6						
7						
8	2	"	"	"	"	"
9						
10						
11	11.20 a. m. stop and full speed astern.					
12	11.29 a. m. stop clear of ship.					
13	2.5 p. m. slow. 2.11 p. m. stop.					
14	3.30 p. m. full speed ahead towards Newport News.					
15	5.10 full speed ahead.					
16	While examining underneath main boilers found part of covering on					
17	end of boilers fallen off.					
18						
19						
20	2	2	4	180	26	F
21						
22						
23						
24	1	"	"	"	"	"

No. of Hours Steam on Main Boiler.	
Under Weigh	Banked Fires
23.37	'40

JUNE 2, 1912.

Throttle valve.	Link motion.	Revolutions.	Feed water.	Sea water.	Temp. Fahr. Discharge.	Temp. Fahr. Engine room.	General remarks, state of weather, sails set, etc.
F	½ 13	61	140	42	100	70	Moderate winds.
"	"	"	"	"	"	"	Moderate wind and sea, Port Qrt.
	11.24 a. m. ship in collision. 12.15 p. m. full speed ahead following damaged ship. Engines used as required attending on damaged ship. 4.50 p. m. stop.						
F	F	61	140	42	100	75	Fresh head wind and moderate sea.
"	"	"	"	"	"	"	Weather moderating.

(Signed) C. JOHNSON,
Chief Engineer.

Q. That is the number you were making that morning?
A. Yes.
Q. Was the ship fully loaded?
A. If I remember right she would be a little light; I wouldn't be certain.
Q. What is her loaded draft?
A. It was the winter months; I am not certain but I think 17.10 is full draft summer line, but I am not certain how she stood when she was running then, but I don't think she was quite down to the mark.
Q. Sixteen and two-tenths forward and 16.4 aft?
A. Yes, fresh water.
Q. Four and one-half less in salt water?
A. Yes.
204 Q. That would be a little less than 16 feet draft?
A. In Salt water, yes.
Q. How much would that be above normal full draft for winter?
A. I couldn't say; I don't know really; I know her fully loaded summer draft is 17.10, but I couldn't say the winter draft.
Q. It would be something like a foot light?
A. Not as much as that.
Q. How much?
A. I couldn't say; probably about 8 inches, I should say.
Q. Would that make a difference in her speed?
A. No, it makes very little difference in it, 15 feet draft up to full draft.
Q. What kind of a propeller has she?

COPY BOUND C

A. Right-handed propeller, four-bladed.
Q. Bronze wheel?
A. No, sir, cast iron.
Q. What is the diameter of it?
A. Fifteen and five-tenths.
Q. From tip to tip?
A. Yes, sir, 15.5 diameter and 15.5 pitch.
Q. What is the normal slip in the open ocean, nine knots speed?
A. Four per cent.
Q. When you get an order as you did that morning to reverse. What do you have to do in order to carry it out?
A. The first thing the telegraph is answered, and you shut the stop for the intermediate stop valve.
Q. Is that a screw valve?
A. Yes.
Q. How many turns does it require to shut it off?
A. Four turns, square thread valve; there is an auxiliary valve on the main boiler to open, and the intermediate valve between that and the reversing engine before you get the steam onto the reversing engine; those are practically within six feet of one another; you open those and you reverse and then turn the steam on.

205 Q. Did you do all this yourself?

A. I opened the intermediate valve, and the donkeyman opened the intermediate valve on the boilers; he answered the telegrpah while I was passing from the after end of the engine room to the reversing engine.
Q. How far away were you from the reversing platform?
A. Twelve feet from the reversing engine.
Q. On the same level?
A. Yes.
Q. You were not long getting to the levers?
A. I was on the same platform at the time within 12 feet of the reversing gear, and I went straight to the reversing lever and the donkeyman answered the telegraph and opened the auxiliary valve on the boiler, and I opened the intermediate valve.
Q. Going astern under those circumstances the engines would naturally be slow starting off?
A. Yes.
Q. Could you give us a rough idea of how many revolutions the engines made astern before the collision?
A. At the time of the collision they were going full speed and in the early part of the collision I don't suppose they would be making more than 25 or 30 revolutions the first minute, if that; of course, they gradually gain their speed, and at the time of the collision the engines would be making 60 revolutions I dare say.
Q. Do you think they had made 60 revolutions for as much as a minute?
A. Yes, they had been making 60 for a minute; the last minute they would make 60 revolutions.
Q. The minute before the last how many would they make?

CLOSE IN CENTER

A. It is hard to judge; they might be only making 40 or 45.

Q. Have you ever made any study of the maneuvring power of vessels of different sizes?

206 A. Yes, I have tried different sized ships I have been in, I have tried the stopping time, but in these full line ships they take some stopping.

Q. This is rather a long time to stop a ship 278 feet in length?

A. Not under the conditions.

Q. Smooth weather?

A. Fair wind and sea; fair wind and sea moderate; I think it is moderate sea; it is in my log book.

Q. Nevertheless the time was rather long as compared with the ordinary time taken to stop ships?

A. I don't know; they vary very much in full power ships; I have had a lot of experience in regard to new ships and under the conditions at the time I think about four minutes would be about near it; because the first minute they are practically—the ship will be at about nine knots still and it would take about half a minute to get the engine reversed, and I might be half a minute out in the clock, the angle I was standing to see, so one thing and another I should reckon it is somewhere near it.

Q. It might have been a little less than four minutes?

A. Certainly it might have been a little less; I might easily have been out half a minute or three-quarters, the angle I was with the clock, because I took it standing with my hands on the lever and the clock would be 14 feet away.

Q. Three minutes would be nearer the usual rule for stopping?

A. Yes.

Q. Than four?

A. Yes, I should say so in smooth water and no current or anything; it depends on where you are, in a river or where you are, and the conditions; these lines of ships are not like yachts; the co-efficiency of fineness is not the idea.

Q. Did you have any talk with the officer on deck about the times?

A. The chief officer?

207 Q. Yes.

A. The chief officer asked me the time we should be going astern from the time the order was given, and I think, if I remember right, I told him about four minutes.

Q. Did you tell him about what time, according to your clock, you got the order to stop?

A. No, I didn't tell him anything about the time.

Q. Do you know how close the clocks were together?

A. I couldn't say that, but I know there is generally a little difference; our clock gains a little, I think, if I remember right, and we generally put the clock right at noon, at which time the position of the ship is worked up, and when they work the position they ring the telegraph down below and the engine room clock is put right.

Q. Your clock at 20 minutes past 11 would be a little ahead?

COPY BOUND

A. Yes, our clock runs a bit fast.
Q. Do you recollect what the difference is in 24 hours?
A. I couldn't say exactly now, because sometimes they stop and regulate the clock, the junior engineers, and sometimes it will go ten minutes in the day and other times it will go five.

Redirect examination by Mr. Burlingham:

Q. Did you hear any remarks made by the officers of the Alleghany about the collision?

Mr. Kneeland: Objected to as incompetent.

A. Not the officers, but I remember on our way to Newport News back, I was in conversation with one of the sailors which I took to be a quartermaster off duty.

Mr. Kirlin: I object to any conversation between the quartermaster and the engineer.

208 Q. Did you hear any conversation between the officers of the ships?
A. No, sir.
Q. Were you in the mess room when the chief officer of the Alleghany came in with a newspaper?
A. Yes, I was in the engineer's mess room when the chief officer of the Alleghany came to the mess room.
Q. Did you hear him say anything?
A. He had a newspaper, a Newport News paper in his hand, and he said to the chief officer, "Have you seen the paper?" and I don't think our officer replied; he said, "Here you are, this is all right, stick to this," and he put his finger on the print.
Q. What was the passage?
A. After he left the passage was something about a blinding snow storm; I don't recollect exactly.
Q. Was there any snow storm?
A. No, sir, none at all; there was no snow storm, it was perfectly clear and the sun was shining.
Q. Will you tell us what you heard the quartermaster of the Alleghany say?

Objected to.

A. On the way back to Newport News one of the sailors which I took to be a quartermaster off duty, in conversation I said to him, and he said to me, "It is a bad job for the mate, you know he was not on the bridge at the time, he was washing his hands in the chart room." I said, "Where was the man at the wheel"; he said he didn't see nothing.

209 JOHN HYSLOP, being duly sworn and examined as a witness for the Pomaron, testifies as follows:

By Mr. Burlingham:

Q. How old are you?
A. Nineteen.

LOSE IN CENTER

Q. How long have you been going to sea?
A. Nineteen months.
Q. In what vessel?
A. The Pomaron.
Q. All the time.
A. Yes.
Q. Have you been on her since you left school?
A. No, sir.
Q. What experience have you had before?
A. I was head salesman in a big shop before that.
Q. Then you went to sea 19 months ago and have been on the Pomaron steadily?
A. Yes.
Q. How are you carried on the articles?
A. As an apprentice.
Q. What does that mean exactly?
A. I am learning to be an officer; I am getting my time in now.
Q. How many years does it take?
A. Four years.
Q. Four years' sea service to become an officer?
A. Yes.
Q. What are your duties on board ship?
A. Practically the same as a sailor.
Q. Do you keep lookout?
A. Yes, on the lookout the same as the sailors.
Q. Do you sleep in the forecastle?
A. No, sir, I sleep along aft.
Q. With the officers?
A. Yes.
Q. You eat with the officers?
A. Yes.
Q. But you perform all the duties of the sailors?
A. Yes; of course there are some things I have not got to do that they do.
210 Q. You don't have to wash decks?
A. Yes, I have to do that too.
Q. Do you take your trick at the wheel?
A. Yes.
Q. Regularly?
A. Yes.
Q. Do you have quartermasters on the Pomaron?
A. No, just a crew.
Q. The crew take their tricks?
A. Yes.
Q. When did you come on duty the day of the collision?
A. Ten o'clock.
Q. To serve how many hours?
A. Two hours at the wheel.
Q. When did you go to the wheel?
A. I came on deck at 8 o'clock and went to the wheel at 10.

COPY BOUND C

Q. Who did you relieve at the wheel?
A. Newman.
Q. What course was given?
A. East by north compass course.
Q. Did you maintain that course?
A. Yes.
Q. Through the watch?
A. Yes.
Q. How was the weather when you went to the wheel?
A. Fine weather.
Q. Any snow?
A. No.
Q. Or rain?
A. No.
Q. Is the wheel on the bridge?
A. Yes.
Q. On the upper bridge?
A. Of course there is only one bridge.
Q. Is there a wheel house too?
A. Yes.
Q. Where is that?
A. On the bridge deck.
Q. Below where you were?
A. Yes, just below.
Q. The wheel there was not in use?
A. No.
Q. You were steering from the bridge?
A. Yes.
Q. In the open?
A. Yes.
Q. You steer by steam?
A. Yes.
Q. Who was on the bridge with you?
A. The mate, Mr. Westgarth.
211 Q. Could you, from where you were, see the indicator?
A. Yes.
Q. How were you going along?
A. Full speed ahead.
Q. Do you recall what the wind was?
A. It would be about west.
Q. You had a fair wind?
A. Practically fair wind.
Q. How much of a breeze was it?
A. Just a light breeze.
Q. What was the first you knew of the presence of the Alleghany?
A. I saw her between four or five points on the port bow.
Q. Did anybody call your attention to her?
A. No, sir, they never speak to the man at the wheel.
Q. How far away do you think she was?
A. Ten or twelve miles.

CLOSE IN CENTER

Q. Any difficulty seeing her?
A. No.
Q. Did the mate use his glasses?
A. Yes.
Q. You did not, of course?
A. No, I can't leave the wheel to go down below to see what is going along.
Q. Did the vessels approach each other in this way?
A. Yes.
Q. She was on your port hand?
A. Yes.
Q. How many points?
A. Between four and five.
Q. Was there any change in bearing after that?
A. No.
Q. Tell us what happened; what orders were given?
A. She would probably be about a mile away when I got the first order from the chief officer.
Q. How was she bearing from you then?
A. Just the same, between four and five points, never altered her bearing at all.

212 Q. What was the order you got?
A. He blew one blast and gave me an order to port a little.
Q. What were his words to you?
A. Port a little.
Q. Did you?
A. Yes, I gave her a stroke or two and she went over about a point.
Q. Did you steady the helm or keep it over?
A. I had it to port all the time.
Q. You say she went over a point; if you had your helm to port all the time, why didn't she go over more?
A. I mean before he gave me the order to hard-a-port.
Q. You said the order given to you by the mate was port a little and that you ported a point?
A. Yes.
Q. Did you steady your helm after that?
A. No, I had it to port all the time, and she went over a point before he gave me the order hard-a-port.
Q. She had made a point when he gave the order hard-a-port?
A. Yes.
Q. What order did he give to the engines?
A. Full astern.
Q. When, with reference to the order hard-a-port?
A. When they blew the two blasts from the Alleghany.
Q. How long was that after your one blast?
A. Probably less than a minute I should think.
Q. When you heard the two blasts of the Alleghany what orders were given by the mate?
A. Hard-a-port and put the engines full astern.

COPY BOUND C

Q. Were those orders at the same time or at different times?
A. He was standing by the telegraph and he put it over—hard-a-port, he said.
Q. At the same time?
A. Practically at the same time.
Q. And you obeyed that order?
A. Yes.
213 Q. Could you feel the vibration of the engines as they reversed?
A. Yes; I could see the indicator too.
Q. Did you swing much to starboard?
A. She would be about east southeast when we struck.
Q. Did you look at the compass?
A. Looking at the compass; looking at the ship, too.
Q. Do you know what the Alleghany did?
A. She starboarded her helm.
Q. How do you know?
A. Because you see them swinging to port; that was after she blew the two blasts; she didn't alter her coure at all before that.
Q. Could you see the bridge of the Alleghany?
A. Yes.
Q. See any men on her?
A. No, couldn't see; they had the dodger up.
Q. Do you know whether there was an officer on the bridge?
A. I couldn't say.

Cross-examination by Mr. Kirlin:

Q. Did the lookout report the other vessel?
A. No, there is no lookout through the day; only at night.
Q. You had no lookout stationed?
A. No.
Q. Nobody on the bridge but you and the mate?
A. No.
Q. The bridge seems to be very far back on this ship according to the photograph; how far back is it?
A. Right on the fore part of the bridge, on the deck.
Q. According to the photograph it seems to be more than half way back?
A. No, sir, it is not; this house here is about amidships (pointing to the galley).
214 Q. Is the smockstack forward of amidships?
A. Yes.
Q. The middle of the ship, rather, fore and aft?
A. Just about the middle of the ship.
Q. You saw the ship when she was about five miles away?
A. Ten or twelve miles off when I saw her.
Q. Did you take any compass bearing of her?
A. No, I just noticed she was about between four and five points on the bow.
Q. What did you notice that by?

LOSE IN CENTER

A. By the compass.
Q. How was she bearing on the compass, did you notice?
A. She would be between four and five points on the bow.
Q. Did you notice upon what point of the compass she was?
A. No. I just noticed she was four or five points.
Q. You are just estimating the bearing; you did not take it on the compass?
A. No, I didn't; just estimating.
Q. Did you notice the officer observe the bearing of the vessel on the compass?
A. No, he didn't come over to look from the compass; I just remember him looking over with his glasses.
Q. Did he look at her over the compass?
A. Yes, looked at her.
Q. What did he do that for?
A. I don't know.
Q. Was he taking the compass bearing of her?
A. Well, I can't tell you; he just came over to the compass when she was getting close to us and turned around and looked over; I suppose he was taking a bearing.
Q. Did you at the time think he was taking a compass bearing?
A. I thought so.
215 Q. How far was she away at that time?
A. She was a long ways off then; I should think she must have been five miles.
Q. Do you know how your ship was heading at the time of the collision according to the compass?
A. East southeast.
Q. Did you see that on the compass?
A. Yes.
Q. Did you notice how the ship was heading on the compass when you got the order hard-a-port?
A. No.
Q. All you can tell is she was heading east by north and you got first an order to port, then an order to hard-a-port and, at the time of the collision she was heading east southeast?
A. Yes.
Q. You told Mr. Burlingham you thought she had swung under the port helm about a point before you got the order hard-a-port?
A. Yes.
Q. What do you base that thought on?
A. You might explain that a little more fully, please.
Q. You said you did not observe how the ship was heading at the time you got the order hard-a-port?
A. No, I didn't.
Q. What makes you think it was a point she had swung under the first port order rather than half a point or a point and a half or two and a half points?
A. Of course when you are standing at the wheel steering a ship and anything happens like that you just take it approximately looking at the compass and then at the ship; you don't notice exactly

COPY BOUND

how many degrees; you just happen to see a ship swinging and you look at the compass and see the point, but I didn't observe all these different things.

Q. You just estimated?

A. Yes.

Q. How far away do you think the ship was when you got
216 the order to port?

A. Probably about a mile as near as I can tell.

Q. Do you think it was as much as that?

A. Yes, it would be as much as that.

Q. As much as half a mile off when you got the order hard-a-port?

A. Yes, it would be half a mile off.

Q. Rather more or rather less, if anything?

A. Well, she would probably be about that.

Q. Did you put the helm hard over when you got the order?

A. Yes.

Q. How much had it been over theretofore?

A. Just a few spokes.

Q. How big is the wheel, a small hand-steering wheel?

A. Yes.

Q. How much do you have to roll it over to put it hard to port?

A. Three turns and two spokes.

Q. How much had you had it over on the first order?

A. About four spokes.

Q. Give it in degrees; you have a little indicator there?

A. Yes, but I never look at that.

Q. How long does it take the ship to swing a point with the helm ported four spokes?

A. She just comes slowly, very slowly.

Q. Very slowly?

A. Yes.

Q. Does it take as much as four minutes?

A. I wouldn't like to say about the time.

Q. Does it take more than a minute?

A. I can't say anything about time, because that is a thing I don't know.

Q. Have you any recollection at all as to how long it was from the time you got the first order to port until you got the second order, in time?

A. Less than a minute, I should judge.

Q. How are you able to fix that time and not the other minutes you have been asked about?

217 A. Because there are some things you might notice and others you don't; I am just telling what I took notice of.

Q. Have you made any statement about this occurrence to anybody?

A. No.

Q. Have you ever talked to anybody about it?

A. No.

Q. Did any lawyers ever take a written statement from you?

A. This gentleman here I was talking to him (indicating).

CLOSE IN CENTER

By Mr. Burlingham.

Q. It was done in Sunderland?
A. In Leith they did take a statement.

Cross-examination by Mr. Kneeland:

Q. Is Mr. Westgarth outside?
A. No.
Q. Has he spoken to you since he came out of here?
A. No.
Q. Not at all?
A. No, sir.

Redirect examination by Mr. Burlingham:

Q. Do you know where Newman, the man you relieved, is?
A. I think he lives in Ireland somewhere.
Q. When did he leave the ship?
A. When we paid off; the whole lot of them left that voyage.
Q. On arrival in Europe?
A. Yes.
Q. Where was Newman after you relieved him at the wheel; where did he go?
A. He was sousing the foremast, washing the paint.
Q. How high up was he on the mast?
A. I should think he was at the top of the rigging.

218 GEORGE HOGG, being duly sworn and examined as a witness for the Pomaron, testifies as follows:

By Mr. Burlingham:

Q. How old are you?
A. Forty-eight.
Q. Where do you live?
A. Gloucester, England.
Q. How long have you followed the sea?
A. Thirty-four years.
Q. What certificate do you hold?
A. Eighty-ton certificate, Australia on the coast, coasting certificate, master of small vessels.
Q. Are you on the Pomaron as boatswain?
A. Yes.
Q. How long have you been on her?
A. Eight months.
Q. Before that what boat were you on?
A. The Tangistan out of Swansea.
Q. You, of course, have had experience in sail as well as steam?
A. Yes.
Q. How long have you been in steam?
A. Fifteen or sixteen years.
Q. Before that in sail?
A. Yes.

COPY BOUND

Q. Deep sea vessels too?
A. Yes.
Q. Were you on watch on duty at the time of the collision?
A. Yes.
Q. How long had you been?
A. I am on duty all day.
Q. You sleep at night and on duty all day?
A. Yes.
Q. How much of a crew do you carry?
A. Six—five A. B.'s and an apprentice.
Q. And they are subject to your orders as petty officer?
A. Yes.
Q. What was the first you saw of the Alleghany?
A. I saw the Alleghany three or four points on the port
219 bow when I came on deck after breakfast.
Q. How far away was she?
A. I suppose she was between nine and ten miles away.
Q. Did you keep any watch on her?
A. No, sir.
Q. Didn't pay any attention to her?
A. Didn't pay any attention at all; was looking after the men at work.
Q. When did you notice there was any danger?
A. I noticed that there was danger when she was about a mile away, where I heard the chief officer blow the whistle.
Q. What did he blow?
A. One blast of the whistle.
Q. Where were you then?
A. On the lower bridge deck.
Q. Forward?
A. Yes, under the bridge.
Q. It is a well deck ship?
A. Yes, and I was on the bridge deck.
Q. Where these men appear on Exhibit 6, just below the bridge, is that the place where you were?
A. That is the bridge deck along there, yes.
Q. You heard your steamer blow one blast?
A. Yes.
Q. That attracted your attention to the other vessel?
A. I was watching the other vessel just before that, too; it didn't exactly attract my attention.
Q. You had been watching?
A. Yes, I was going forward and aft, watching the men working aloft painting.
Q. When one blast was blown what was the situation; was there any danger?
A. I should think there was danger if someone did not alter their course.
220 Q. Did she appear to be altering her course?
A. The Alleghany?
Q. Yes.

CLOSE IN CENTER

A. No.
Q. Did you get any signal from her?
A. He blew two blasts of the whistle just after we blew.
Q. Do you mean she replied at once?
A. No.
Q. How long a period?
A. It might be a minute, I dare say.
Q. Do you know whether any orders were given on your vessel after that?
A. No; I heard the telegraph ring down below; you could hear from the upper deck.
Q. When did you hear that, with reference to the two blasts of the Alleghany?
A. I heard just before the Alleghany blew.
Q. Just before the Alleghany blew you heard the engine telegraph?
A. Heard the telegraph ring below.
Q. How long before?
A. I suppose it might be—just after our whistle blew.
Q. Did your boat swing at all?
A. I couldn't tell whether our boat swung.
Q. Do you know what the other boat did; do you know whether she changed her course?
A. She altered her course, yes, sir.
Q. Under what helm?
A. Starboard helm.
Q. How do you know?
A. Her quarter swung across our bow.
Q. And the two vessels came together how?
A. The Alleghany's starboard side came across our bow.
Q. Did she stop her way at all?
A. No.
Q. Did you see any reduction in her speed?
A. None at all.
Q. Was she going as fast as you?
A. She is a faster boat than us.
221 Q. Was your way checked?
A. Our ship was nearly stopped as far as I could see.
Q. Where were your men at this time; Newman, where was he?
A. Newman was painting the foremast.
Q. Where was the other seaman?
A. The other man was painting the main mast.
Q. You had three in the watch?
A. Yes.
Q. And the apprentice counts one?
A. Yes, he was at the wheel.
Q. How was the weather at the time of the collision?
A. Fine weather.
Q. Any sign of snow or rain or hail?
A. No, sir.

COPY BOUND C

Cross-examination by Mr. Kneeland:

Q. How far away was the Alleghany when she blew the two whistles?
A. I should think nearly a mile away; three-quarters of a mile.
Q. At that time you felt the vibration of your engines in reversing?
A. I could feel the vibration of the vessel going astern when the engines reversed.
Q. That was before the Alleghany blew?
A. Yes.
Q. How long before?
A. I couldn't tell exactly; a matter of seconds, I suppose.

Cross-examination by Mr. Kirlin:

Q. How many whistles did you hear altogether?
A. From both vessels?
Q. Yes.
A. Three.
Q. What were they?
A. One blast from our ship and two blasts from the Alleghany.
Q. You heard no others?
A. No, sir.

222 JAMES LAVERACK, being duly sworn and examined as a witness for the Pomaron, testifies as follows:

By Mr. Burlingham:

Q. How old are you?
A. Twenty-two.
Q. How long have you followed the sea?
A. Eight and a half years.
Q. What certificate do you hold?
A. First mate.
Q. How long have you had it?
A. Sixteen months.
Q. You were second officer of the Pomaron at the time of the collision with the Alleghany?
A. Yes.
Q. Were you on duty?
A. No, sir.
Q. Where were you at the time of the collision?
A. I was asleep.
Q. Where are your quarters?
A. Right aft.
Q. What woke you?
A. The shock of the collision; I was just about dozing when she hit.
Q. Did you go out at once?
A. Yes, went right up.
Q. Where did you go?

CLOSE IN CENTER

A. On the break of the poop.
Q. Where was the Alleghany then?
A. Our bow was just in the break of his poop, right alongside of her then, touching.
Q. Was your boat moving ahead or going astern?
A. She was just about stopped; the engines were going astern.
Q. How do you know; could you feel the vibration?
A. Yes, sir.
Q. What were the engines of the Alleghany doing?
A. I don't know; I daresay they were stopped.
Q. Did the boats remain together or did they separate?
A. No, she went ahead; separated.
223 Q. Who went ahead?
A. The Alleghany.
Q. How far off did she go?
A. I couldn't say exactly; I went below then to get dressed.
Q. How was the weather when you came out on deck at the time of the collision?
A. Fresh breeze with moderate following sea, cloudy sky.
Q. How far could you see?
A. I couldn't say.
Q. There was no difficulty about seeing?
A. No difficulty at all; it was clear.
Q. Did you have any talk with the captain of the Alleghany?
A. No, only the last day when we arrived in Newport News.
Q. What was it?
A. He came aboard with a paper in his hand about a blinding snow storm; he said it would help a lot; I said, "It is sure to come out it was clear."
Q. Was this the captain of the Alleghany?
A. Yes.
Q. Not the chief officer?
A. Not the chief officer; the captain.
Q. Had you heard any talk or did you have any talk with the chief officer on the same subject?
A. I only heard him say in our engineer's mess room when we were at dinner.
Q. What did you hear?
A. He just pointed that out.
Q. What did he say?
A. He said it would be all right at the trial.
Q. What day was that?
A. The day we arrived here.
Q. What day?
A. Saturday.
Q. When was the conversation with the captain of the Alleghany?
A. Saturday afternoon.
Q. After the Pomaron had arrived here?
A. Yes.
Q. The captain of the Alleghany came on board the Pomaron again?

COPY BOUND C

A. Yes.

224 Q. Have you seen anything of the scrap log of the Pomaron?

A. No.

Q. Have you ever looked for it?

A. Yes, we looked for it but can't find it.

Q. When did you miss it?

A. Sunday morning.

ross-examination by Mr. Harrington:

Q. Did the blast from your ship wake you up before the collision?

A. I fancy I heard it, but I wasn't sure.

Q. How long do you think you had been asleep?

A. About three hours; my watch below was nearly up.

Q. You did not hear a two-blast signal from your ship?

A. No, the engines stopping in the collision woke me up; I was dozing.

Redirect examination by Mr. Burlingham:

Q. Did you hear any signal from either vessel?

A. I fancy I heard one blast, but I don't know for sure.

Q. From your vessel would that be?

A. I couldn't tell.

Cross-examination by Mr. Kneeland:

Q. Did you get out before the captain?

A. I was up on deck before he was.

Q. Did you have to go through the saloon to get up?

A. No, I am not forced to go through the saloon.

Q. Where are your quarters?

A. Right aft on the port side; the captain's on the starboard side.

Q. How do you go out?

A. I can go right out the bridge up the companion way.

Q. Did you see the captain when you went out?

A. No.

225 Q. Had he come out of his room??

A. I don't think so.

Q. When you got out on deck the vessels were together?

A. Yes, and the break of the poop was like that (indicating).

Q. Did you see when the captain did come out?

A. I was in dressing when he went up on deck.

Q. You had been up and gone down?

A. Yes.

Mr. Kneeland: In view of certain statements which have been made today with respect to the scrap log of the Pomaron I would like to have Mr. Smith state whether or not he or his firm have or ever have seen that scrap log?

Mr. Smith: We have never seen or heard of it until today.

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Mr. Burlingham: In view of the fact that neither Mr. Kneeland nor Mr. Harrington has yet filed any libel in the case I would like to ask whether they have any other or different allegations to make than those contained in Mr. Kirlin's libel.

Mr. Kneeland: Yes; we shall refrain from all charges that the vessel was proceeding through snow.

Mr. Harrington: So shall we.

Mr. Kirlin: I shall withdraw what is in my libel about snow; I should like to ask Mr. Burlingham to state what the defense to my libel is, no answer having been filed.

Mr. Harrington calls for the production of the report made by the officer of the British Board of Trade, or the production of an authenticated copy thereof.

226 YANG-TSZE EXHIBIT No. 12.

1-13-13.

(In 7309 Facsimile Copy.)

Inq. 1.

Issued by the Board of Trade.

Examination on Oath Relating to the S/S Pomaron.

In pursuance of the 465th Section of The Merchant Shipping Act, 1894, 57 and 58 Victoriae, Cap. 60.

1. Names of deponent at full length.

1. JAMES GRIFFITHS, being duly sworn, deposes as follows, namely:

2. State whether deponent is "Master," "Mate," etc., of the ship, the name of the ship, and particulars as to her tonnage and official number.
If the ship is a steam ship, the fact should be stated, as well as the nominal horse power of the engines, and whether paddle or screw.

2. That he is Master of the Ship Pomaron of the Port of West Hartlepool of the Register Tonnage of 1,127 Tons, her Official Number being 124345.

Screw Steamer 148 H. P.

3. Names and residence of owners.

3. That the said Ship is owned by Furness, Withy & Co. Ltd. residing at West Hartlepool in the of

4. Particulars of rig, build, age, and class of ship.

4. That the said Ship is rigged as a Schooner that she was built of Steel at Grangemouth in the year 1907, and that she is classed in British Corporation as A-1 100 years.

COPY BOUND C

5. Particulars as to the number of hands composing crew, and as to the certificate of deponent.

5. That the Crew consist of 23 hands, including deponent; that the deponent's Certificate is a Certificate of competency, and is numbered 033 566.

6. Particulars of cargo, and shippers and consignees.

6. That the said Ship had on board a Cargo of General goods of the weight of 2500 tons, shipped various shippers of Baltimore and consigned to order of Leith.

7. Number of passengers on board. Note: If the wife and children of the master or any officer of the ship are on board, the fact should be stated.

227 7. That the said Ship had on board in addition to the Cargo aforesaid no Passengers.

8. Draught of water at time of sailing.

8. That the draught of water of the said Ship was 16 feet 3 inches forward and 16 feet 4 inches aft.

9. Date and hour of sailing, and state of tide, weather and wind.

9. That said Ship proceeded from Baltimore on her intended voyage as named below, on the 1st day of Feb. last past, at 7 A. M.; the tide at the time being the weather , and the wind blowing from the

10. Any statement as to the condition of hull and cargo of the ship, or of her equipments, life saving appliances, etc., at the time of sailing.

10. That at the time of sailing as above the said Ship was well found in every respect and in good condition.

11. Limits of intended voyage.

11. That the said Ship was bound for Leith in Scotland.

12. Statement as to the voyage previous to the casualty.

12. That the said Ship proceeded on the said intended voyage as above stated and on the 2nd Feb. at 5 A. M. Deponent went below leaving the 2nd Officer in charge. Deponent had been on deck from the time of leaving Baltimore until then. The weather was fine and clear when he went below.

13. Particulars of the casualty, commencing with the date and hour, and the state of the tide, wind, weather and sea.

13. That on Friday the 2nd day of February at about 11.20 A. M.; the tide at the time being xxxxxxxxxxxxx (Init'd) J. G. the weather fine & clear, and the wind in the West North West blowing a moderate breeze with a moderate sea from the West. xxxxxxxxxxxxx Deponent was awakened by the Steward calling him and at once went on the deck. As he came out of his berth he felt the shock of the collision and

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228 on getting on the Bridge he found the Chief Officer there in charge and the Apprentice Hyslop at the wheel. He saw another steamer which proved to be the German Steamer Alleghany near to on the Port bow. He ordered the boats to be swung out and the damage to be ascertained. When he came on the bridge the engines were working astern and the ship's head was about South. The mate stopped the engines. It was reported to Deponent that the vessel was making no water in the Holds but that her Port bow was badly damaged. He then signalled to the Alleghany asking if any assistance was wanted. The Alleghany replied "do not abandon me" and deponent stood by. Very soon afterwards the Alleghany went full speed ahead; heading W. N. W. and the Pomaron followed her. About 2 hours after he noticed that the Alleghany had stopped and seemed to be settling down aft and upon getting close to her, it was found that her boats with all her crew and passengers in them were in the water. Deponent stopped and picked them all up. He then asked the Captain of the Alleghany if there was anything else he could save. He replied that it would be madness to send anyone aboard then as the water was up to the after deck when they left her. Deponent stood by the Alleghany until 3.20 P. M.; when she sank stern first.

(Init'd) J. G.

14. Statements respecting services rendered, if any.

14. That in Lat. 37 N. and Long. 74.4 West he then proceeded for Newport News at full speed, arriving there at 6 A. M. the following morning xxxx (Init'd) J. G.

15. Such other matters or circumstances relating to the ship or cargo as the officer thinks necessary.

229 15. That the damage to the Pomaron was the stem broken and twisted several plates damaged and Port anchor lost. The damage extended right down to the forefoot. Permanent repairs were made at Newport News. There was no water in the holds, but the fore peak was full to the water level.

16. Loss on ship and cargo, and amount of insurance on ship, cargo, and freight.

16. That the loss on the said Ship cannot be estimated by Deponent at Pounds Sterling, and on the said Cargo at can't say if any damaged Pounds Sterling, the Cargo in can't say Pounds Sterling, and the Freight in can't say Pounds Sterling.

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17. Particulars of lives lost and saved, etc.

17. That in consequence of the collision the said Ship no lives were lost by.....the remainder 23 in all, viz., Master, and 22 Crew† and no Passengers, xxxxxxxxxx by remained aboard, and subsisted on board that vessel from the ..... to the ....., when they were landed at ..... That following provisions, valued at .....; were transferred from the wreck to the salving vessel ..... The entire crew and passengers of the Alleghany viz. 48 crew and 3 passengers were taken aboard the Pomaron and landed at Newport News as stated.

18. Cause of the casualty, etc.

18. That, in deponent's opinion the cause of the casualty was the Alleghany trying to cross the Pomaron's bows and it might have been avoided by.....

230 19. That the above contents are in all respects correct and true to the best of deponent's knowledge and belief.

(Sgd.) JAS. GRIFFITHS,
Deponent.

Sworn at Leith this 12th day of March 1912 before me,

(Sgd.) HUGH D. McEWEN.
xxxxxxxxxxxxxxxxx
xxxxx *Officer* xxxxxxxxxxxxxx.*

*Obliterate the words that do not apply.

Person appointed for the purpose by The Board of Trade under Sec. 465 of M. S. A., 1894.*

†In the number of the Crew should be included all Officers except the Master.

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YANG-TSZE EXHIBIT No. 12A.

(In 7309 Facsimile Copy.)

Inq. 1.

Issued by the Board of Trade.

Examination on Oath Relating to S/S Pomaron.

In pursuance of the 465th Section of The Merchant Shipping Act, 1894, 57 and 58 Victoriae, Cap. 60.

1. Names of Deponent at full length.

231 That WILLIAM ARMSTRONG WESTGARTH, being duly sworn, deposes as follows: namely, 5 High St. Normandy Yorkshire.

2. State whether Deponent is "Master," "Mate," etc., of the ship, the name of the ship, and particulars as to her tonnage and official number.
If the ship is a steam ship, the fact should be stated, as well as the nominal horse power of the engines, and whether paddle or screw.

2. That he is Chief Officer of the Ship Pomaron of the Port of West Hartlepool of the Register Tonnage of 1127 Tons, her Official Number being 124345.

3. Names and residence of owners.

3. That the said Ship is owned by Furness Withy & Co. Ltd. residing at West Hartlepool in ..... of .....

4. Particulars of rig, build, age, and class of ship.

4. That the said Ship is rigged as a Schooner that she was built of steel at Grangemouth in the year 1907, and that she is classed in British Corporation xxxxxx as ..... years.

(Init'd W. A. W.)

5. Particulars as to the number of hands composing crew, and as to the certificate of deponent.

5. That the Crew consisted of 23 hands, including deponent; that the deponent's Certificate is a Certificate of competency as Master, and is numbered 003398.

6. Particulars of cargo, and shippers and consignees.

6. That the said Ship had on board a Cargo of General goods ..... of the weight of 2500 tons, shipped various shippers Baltimore and consigned to order of Leith.

7. Number of passengers on board. Note: If the wife and children of the master or of any officer of the ship are on board, the fact should be stated.

7. That the said Ship had on board in addition to Cargo aforesaid no Passengers.

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8. Draught of water at time of sailing.

8. That the draught of water of the said Ship was 16 feet 3 inches forward and 16 feet 4 inches aft.

9. Date and hour of sailing, and state of tide, weather and wind.

9. That said Ship proceeded from Baltimore on her intended voyage as named below, on the 1st day of February last past, at 7 A. M.; the tide at the time being ..... the weather ....., and the wind blowing ..... from the .....

232

10. Any statement as to the condition of hull and cargo of the ship, or of her equipments, life saving appliances, etc., at the time of sailing.

10. That at the time of sailing as above the said Ship was well found and in good condition.

11. Limits of intended voyage.

11. That the said Ship was bound for Leith in Scotland.

12. Statement as to the voyage previous to the casualty.

12. That the said Ship proceeded on the said intended voyage as above stated .....

13. Particulars of the Casualty, commencing with the date and hour, and the state of the tide, wind, weather and sea.

13. That on Friday the 2nd day of February at 10.35 A. M.; the tide at the time being .....; the weather fine and clear, and the wind in the West North West blowing a moderate breeze with a moderate sea from the West, the said Ship was in 37.26 N. Lat. and 73.42 W. Long. Deponent was in charge on the upper bridge and apprentice John Hyslop was at the Steam Steering Wheel also on the upper Bridge. The deck watch was employed painting the fore and main masts the boatswain was also on deck looking after the men who were painting the masts—a thoroughly good lookout was kept by deponent. The ship was steering E. by North ¼ North magnetic and the Engines were at full speed say 9 knots, Deponent saw a steamer which proved to be the "Alleghany" of Germany about 3 or 4 points on the Port bow heading about South ¼ West about 10 to 12 miles distant. Both vessels kept their courses and approached each other; the Alleghany going about 13 knots an hour. At 11.14 A. M. Deponent blew one short blast the vessels then being about a mile apart and still on the same course.

233

After about a minute the Alleghany replied with 2 short blasts and immediately after Deponent noticed that the Alleghany was swinging on her starboard helm. Immediately deponent heard the two blasts he reversed the en-

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gines full speed as he saw that the Alleghany was too close to pass across his bows safely, he did not then sound his whistle. The Alleghany continued to come ahead at high speed still swinging on her starboard helm and the vessels came in contact. The starboard side of the Alleghany struck the Pomaron's port bow. The part of the Alleghany that was in contact with the Pomaron was the starboard side abreast of No. 3 hatch. The Alleghany swung clear and passed ahead. There was very little way on the Pomaron which was swung round to starboard by the collision. Deponent kept the engines going astern for 4 or 5 minutes after the collision and then stopped them. The Alleghany also stopped and lay about a mile off the Port hand. The Master came on deck immediately after the collision and took charge and Deponent examined the damage. Generally he found the stem twisted around to the Starboard side.

14. Statements respecting services rendered, if any.

14. That.....several plates on both bows were broken the greatest damage being on the Port bow. The forepeak was full of water. The vessel was open from 6 inches to 1 foot as far as deponent could see under the water. Immediately the Pomaron's damage was ascertained the Alleghany was signalled whether she required any assistance and Deponent understood that she required assistance and the Pomaron stood by.

15. Such other matters or circumstances relating to the ship or cargo as the officer thinks necessary.

234 15. That.....
....immediately afterwards the Alleghany went full speed ahead towards the land and the Pomaron followed heading W. N. W. About ¼ past 2 the Pomaron had overhauled the Alleghany which had stopped. She was settling down by the stern and all her crew and passengers were in her boats. They were all taken aboard the Pomaron 51 in all and the Pomaron stood by the Alleghany until 3.20 P. M. the same day when she sank in Lat. 37.33 N. xxxxxxxxxx 74° 4′ W. Long. The
(Init'd) W. A. W.
Pomaron ran for Newport News where she arrived on the 3rd Feb. at 6 A. M.

16. Loss on ship and cargo, and amount of insurance on ship, cargo and freight.

16. That the loss on the said Ship cannot be estimated by Deponent at ..... Pounds Sterling, and on the said Cargo at can't say Pounds Sterling, and that the Ship was insured in the sum

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of can't say Pounds Sterling, the Cargo in can't say Pounds Sterling, and the Freight in can't say Pounds Sterling.

17. Particulars of lives lost and saved, etc. When deponent blew the single blast at about 11.14 A. M. he ported his helm a little and the only signals made by the Alleghany were the two blasts blown in answer to this single blast. (Init'd) W. A. W.

17. That in consequence of the collision with the said Ship no lives were lost by ..... the remainder 23 in all, viz., Master, and 22 Crew† and no Passengers, xxxxxxx by remained aboard

(Init'd) W. A. W.

....., and subsisted on board that vessel from the ..... to the ....., when they were landed at ..... The following provisions, valued at ....., were transferred from the wreck to the salving vessel ..... The Passengers and Crew of the Alleghany were landed at Newport News.

18. Cause of the casualty, etc.

235 18. That, in deponent's opinion, the cause of the casualty was the failure of the Alleghany to comply with the rule of the road. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.....
.....

19. That the above contents are in all respects correct and true to the best of deponent's knowledge and belief.

(Sgd.) W. A. WESTGARTH,
Deponent.

Sworn at Leith this 12th day of March 1912 before me,

(Sgd.) HUGH D. McEWEN,
xxxxxxxxxxxxxxxxx *Coastguard.**
xxxxxxxxxxxxxxxxx.*

*Obliterate the words that do not apply.

Person appointed for the purpose by the Board of Trade under Sec. 465 of M. S. A., 1894.

†In the number of the Crew should be included all Officers except the Master.

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236 YANG-TSZE EXHIBIT No. 14a.

1-13-'13.

U. S. District Court, Southern District of New York.

YANG-TSZE INSURANCE ASSOCIATION, LIMITED, et al.
v.
FURNESS, WITHY & COMPANY, LIMITED,

And — Other Cases Arising Out of the Collision Between the British Steamship Pomaron and the German Steamship Alleghany, February 2nd, 1912.

It is hereby stipulated, for the purpose of the trial of these cases and in order to obviate the delay necessary to the issuance of a commission to take the testimony of the Master and First Officer of the German Steamship "Alleghany," that the following statements may be received in evidence at the trial of these cases as evidence of the facts herein contained:

Statement of Captain Metzenthin:

"I was master of the German Steamship Alleghany at the time of her collision with the steamship Pomaron. The first officer was on watch. I was first made aware of the danger of collision by hearing the whistle signal. When I saw the Pomaron he was
237 quite close to and a collision unavoidable. I have had the first officer on board with me for quite a long time, and he has always proved trustworthy. The sinking of the Alleghany was due to the engine room bulkheads not holding."

Statement of First Officer Kurt Morens:

"I was first officer of the Alleghany at the time of her collision with the steamship Pomaron. I was on watch on the bridge and was engaged in taking observations. I had a free outlook, but, as I must admit, had for some time neglected to look to the starboard side where the other steamer came. I thought that on the English steamer the bridge was unoccupied and that an officer first came on to it shortly before the collision. But I cannot absolutely confirm that. I know that it was my duty to keep out of the way. I omitted during a period of about three-quarters of an hour to keep a lookout to starboard, and therefore never noticed the Pomaron crossing my course until the latter gave a signal to keep clear and had already approached so near that a collision was unavoidable. There was no lookout man at the time and the steersman's lookout, to starboard, was blocked by a wind screen. For a long period of time I neglected to keep a lookout, and therefore first saw the crossing steamer Pomaron only at the last moment. My excuse is that I was engaged in making observations. No

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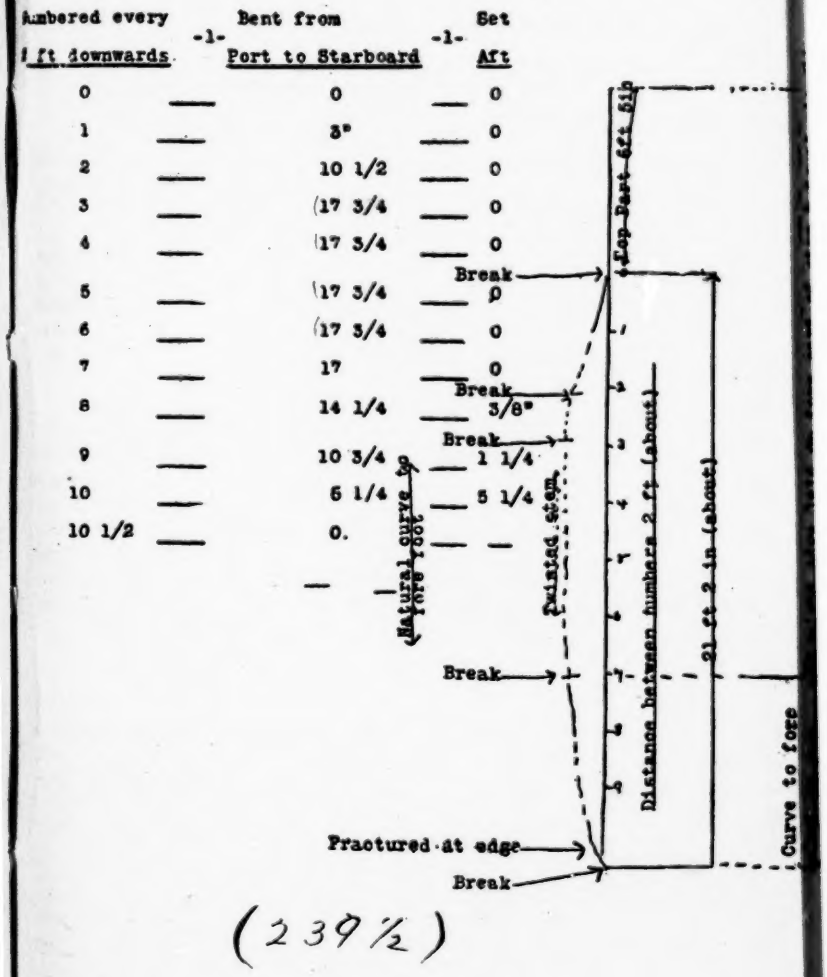

(239½)

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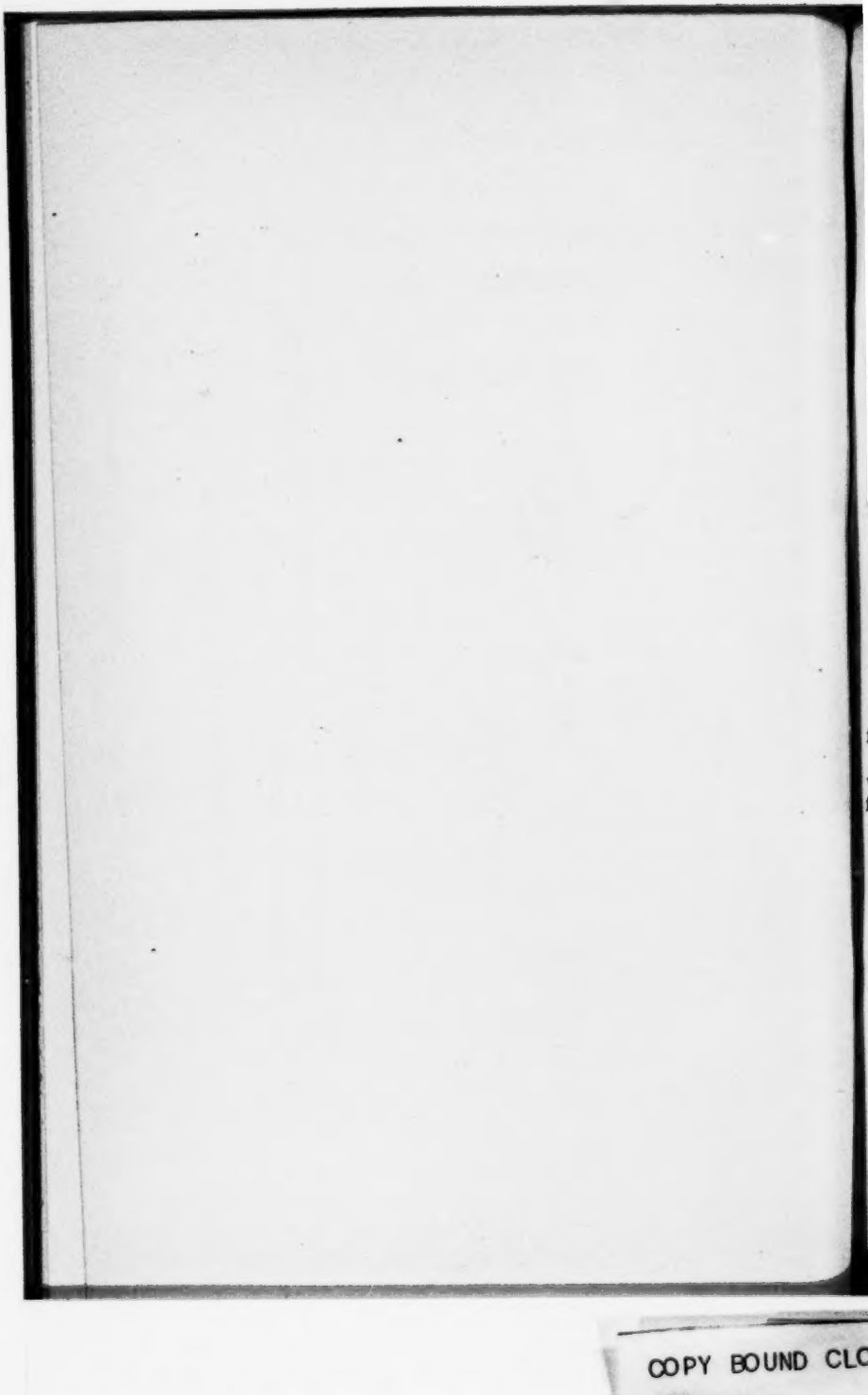

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commands were given to the steersman of the Alleghany.
238 After the collision we went full speed astern until the vessel stopped."

Dated, New York, January 6th, 1913.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for the Pomaron.
CONVERS & KIRLIN,
Proctors for Yang-tzse Ins. Co. et al.
HARRINGTON, BIGHAM & ENGLAR,
Proctors for Various Cargo Claimants.
WILLIAMS & STEVENSON,
Proctors for Boston Insurance Co.
KNEELAND, HARISON & HEWITT,
Proctors for Federal Insurance Co.
HENRY A. WISE, *United States Attorney.*

239 POMARON EXHIBIT No. 1.

June 7, 1912.

Feb., 1912.

Particulars of Broken Stem of S. S. "Pomaron."

Broken top part is 6 ft. 5 ins. long, and perfectly straight.
Lower part having fine breaks in it 21 ft. 2 in. long and is bent from Port to Starboard.
The following are the measurements taken of the lower part when the damage plates were attached showing the bend of the stem from Port to Starboard.

(Here follows diagram marked page 239½.)

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240 RESPONDENT'S EXHIBIT A.

Of January 13, 1913.

(Containing Yang-tsze Exhibit 13.)

United States District Court, Southern District of New York.

YANG-TSZE INSURANCE ASSOCIATION, LIMITED, et al.
vs.
FURNESS, WITHY & COMPANY, LIMITED,

And — Other Cases Arising Out of the Collision Between the British Steamship Pomaron and the German Steamship Alleghany, February 2nd, 1912.

It is hereby stipulated for the purpose of the trial of these cases, that the annexed copy of extracts from the Day Book or Log of the German Steamship Alleghany are true copies of parts of said Log Book, and may be put in evidence on the trial of these cases by either party.

Dated, New York, January 8, 1913.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Pomaron.

CONVERS & KIRLIN,
Proctors for Yang-tzse Ins. Co., et al.

241 HARRINGTON, BINGHAM & ENGLAR,
Proctors for Coleman and Other Cargo Claimants.

WILLIAMS & STEVENSON,
Proctors for Boston Insurance Co.

KNEELAND, HARISON & HEWITT,
Proctors for Federal Insurance Co.

HENRY WISE, *United States Attorney.*

(Translation.)

Log of Alleghany.

Title Page:

Hamburg-American Line.

Log of the German Steamship Alleghany. Home Port Hamburg. Signal R. M. D. P. Captain Th. Metzenthin. Gross Measurement 2494 Tons, Net 1606 Tons.

This Book contains 150 numbered pages, each of which is intended for one day. There are in it printed rules for the keeping of the log, and there are contained in it blanks for recording births and deaths on the ship during the voyage, as well as some samples for such records. In the back of the book there are added blanks for the birth and death register.

Page 85, left hand of page

1912, 2nd of February, Log of the SS. Alleghany on 133rd Voyage from New York to Inagua

1 Hrs in the Mng.	2 Wind	3 Force	4 Weather	5 Barometer	6 Thermometer Air	6 Thermometer Water	7 Course by Compass	8 Drift	9 Total Variation	10 Variation Chart	11 Deviation	12 True Course	13 Miles	14 Water in Pumps	Depth of Water Soundings and Character of Gr
1	WSW	3	ptly cloudd				S 8°w		6°w			S 2° W			
2	"	4	"				"		"			"			
3	"	"	"				"		"			"			
4	"	"	"	29.77	36	38	"		"			"	40	empty	
5	WSW	4/5	"				S 7°W					S 2° W			
6	"	"	"				"	ø	5°w	7,5w	2,50	S 2° W			
7	"	"	"				"		"			"			
8	"	"	"	29.77	40	48	"		"			"	46	empty	
9	W	5					S 6°W	ø	4°w	7,5 w	2,50	"			
10	"	"					"					"			
11	"	"					"					"			
12															

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From Barnegat, Latitude left 39°46' N.--Long. 73°56'W

Ex. No. 13
1 - 13 - '13

242 This log was begun on October 19th, 1911 and was closed on —.

Page 84:

Thursday, the first of February, 1912.

Crew accomplished ordinary routine of work. 3 hrs. 30 min. cargo on board ship. Draft forward 20'6"—aft 22'.

The cargo taken on in New York was stowed away in good shape by experienced men under the constant supervision of officers and well protected and covered. Before loading was begun all bilges and sieves, and also the drains were overhauled and, when necessary, cleaned. Safety appliances and fire-apparatus inspected, and found in good order. Ship in perfectly seaworthy condition. The crew complete and healthy. All the outboard-ports and bulkheads were watertight. Lifebelts of the crew inspected. All hand-pumps were in good order. The side-lights were adjusted, and put into proper position.

(Signed) TH. METZENTHIN.
MORENZ, *1st Officer.*

6.50 passed quarantine station.
8.00 pilot discharged.
8.15 (Chr. 1 hr. 18 min.) Beginning of Voyage.
Compass Course: S. 6° W.
9.50 a. m. passed Sea Girt Light 4½ miles off.
Calm Sea.
11.52 passed Barnegat, 8½ miles off.

(Here follows table marked page 243.)

244 On the right-hand page are the following entries:

Occurrences and Remarks.

Compass Course:

From 1- 4 South 6° West, 30, Light Sea.
" 5- 8 South 5° West, 76, Moderate Sea.
" 9-12 South 4° West. Considerable swell.
Chronometer 5.7.0.

Then follows this entry:

On the 2nd of February, on the voyage from New York to Inagua, at 37° 32′ North latitude and 74° West longitude, at 11.15 a. m., the English steamship Pomaron, of West Hartlepool, struck with her bow the Alleghany on the starboard side between hatches 3 and 4. Sounded at once; found 12½ feet of water in No. 3 hold. No. 4 was dry.

All the pumps were started immediately, and the life-boats cleared, supplied with food and supplied with cork-jackets. In the beginning it seemed as if we could hold our own against the water in the hold as we had found the same water-level a number of times. Suddenly the water rose very fast and towards 12 o'clock hold 3 was filled and at the same time there was water in hold No. 4, which filled just as fast. The steamer Pomaron was notified through flag-signals to stand by. From 11.40 a. m. we steered N. 60° to reach the coast if possible. The engine worked full speed. The Pomaron followed us. The First Engineer announced at 1.20 that the bulk-head door between hold 3 and the engine room had given away allowing the water to rush into the engine room. Realizing that the ship could not be held with the pumps we drew the fires at 1.45 p. m., opened the safety valves, ordered the crew and the passengers into the boats and lowered the boats into the water. At 1.50
245 the boats left the ship, the sea flooding the after deck by that time. All the passengers and crew had been rescued and transferred on board the Pomaron by 2.50. Two boats were smashed against the side of the ship after the people had gotten out safely. The other two were hoisted up. The Pomaron remained in the vicinity of the Alleghany until the ship sank at 3.15 at 37° 42′ North latitude and 74° 22′ West longitude. Thereafter the Pomaron set her course for Newport News. The Pomaron had received serious damage at the bow, yet her holds did not leak. At the time of the collision the weather was clear, the wind West, force 5, the sea high and rising. First Officer Morenz was on watch, the Quartermaster Ramitz at the wheel. The first officer was engaged in taking observations of the sun and had just gone into the chart-house to note the measured latitude when he heard two short blasts of a steam whistle. He ran out immediately and saw the steamer about 5 points from forward close by the starboard side crossing our course. Realizing that he could not clear her by porting, he gave two short whistles and also put the helm ha

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astarboard. The engine telegraph was put twice full speed ahead, but the collision was unavoidable, as the steamer was too close to the Alleghany. After the collision the telegraph was put full speed astern, and when the ship had stopped the engines were stopped. The First Officer, Morenz, says that he, in observing the sun on the port side, had overlooked the approaching steamer on the starboard side. The Quartermaster Ramitz, did not see it either. I myself was in the cabin at that time and ran on deck as soon as I heard the two whistles. I saw her heading directly at us
246 about amidships. I called to the other steamer to go full speed astern; after that the officer on the bridge put his telegraph that way. A few seconds after that the collision took place.

Immediately after the collision a telegram was sent to the Hamburg-American Line in New York advising them of the accident. The saving of the men was successful, and without any extraordinary occurrence. The crew behaved well. Their personal belongings were not saved.

On board SS. Pomaron, February 2nd, 1912.

(Signed) TH. METZENTHIN, *Captain.*

Translation Log SS. Alleghany page 86 at bottom.

Additional:

I hereby certify that the Log-Book is closed, and that same must not be used hereafter.

Newport News, Va., February 3rd, 1912.

Imperial German Vice-Consulate.

[L. S.] (Signed) HENRY L. SCHMITZ.

247 United States District Court, Southern District of New York.

THE FEDERAL INSURANCE COMPANY
against
FURNESS, WITHY & CO., LTD.

EUGENE J. F. COLEMAN and Others
against
FURNESS, WITHY & CO., LTD.

NORD-DEUTSCHE INSURANCE CO.
against
FURNESS, WITHY & CO., LTD.

YANG-TSZE INSURANCE CO., LTD., et al.
against
FURNESS, WITHY & CO., LTD.

Opinion.

This is a suit in admiralty arising out of a collision on the high [illegible] on February 2nd, 1912, at about half past 11 in the forenoon,

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some 100 miles off the Chesapeake Capes, between the steamer Alleghany (sic) and the steamer Pomaron. The libellants in the case represent the cargo of the Alleghany, which was sunk by the collision, and the suit is between them and the owners of the Pomaron.

The weather was clear, the wind and sea moderate. The
248 Alleghany, an ordinary tramp steamer, 310 feet long, had left New York the previous night, bound for the West Indies, and was then on a course south two degrees west true, at a speed of almost exactly 11½ knots an hour. The Pomaron, a similar steamer, 278 feet long, had left Baltimore February 1st at 7 A. M. and was on a course east nineteen degrees north true, at a speed of about nine knots. The collision occurred about 110 miles outside of Cape Henry in 37 degrees 26 minutes North and 73 degrees and 42 minutes West. These facts are all conceded. From them it results that the angle between the courses of the vessels was 111 degrees. The Pomaron sighted the Alleghany at about 10:30, some ten or twelve miles away on her port hand, the exact bearing being one of the points in dispute. Each vessel kept her course and speed for about 45 minutes. During that time the chief officer of the Pomaron had constantly observed the Alleghany, and taken her bearing roughly over his compass, which he made about northeast. The Alleghany had not, however, seen the Pomaron at all. This was due to the fact that the chief officer, then on watch, had taken his observation and gone into the chart room to calculate his position. As the wind was from the west, there were dodgers upon the starboard end of the Alleghany's bridge, and either these or the situation of the quartermaster at the wheel, prevented him from seeing off on his starboard hand. No lookout was kept, and the quartermaster was steering by a course, the result being that the Alleghany did not see the Pomaron until the Pomaron herself blew. The Pomaron's chief officer, Westgarth, kept his course and speed, as required by

the 21st article of the International Rules, until a time which
249 he places variously between five and seven minutes of the collision. Then he blew one blast and directed his quartermaster to port his wheel a little. The only testimony of the amount of this porting comes from the testimony of Westgarth and the quartermaster, which shows that at the end of the time the ship had changed her heading one point to starboard. They and the boatswain place the period at one minute. Meanwhile the Alleghany had kept her course and speed unaltered, although the giving-way vessel. At the end of the period, whatever it was, the Alleghany blew two blasts, and put her wheel hard-a-starboard. At that moment, or soon thereafter, the Pomaron hard-a-ported and telegraphed to her engine room, "full speed astern." This order was executed in the engine room in about half a minute, perhaps less, as her engineer testified, and she continued under reversed engines until the collision. The time between the reversal of the engine and the collision is stated by the engineer to have been three minutes and a half. This he says he observed upon the clock in the engine room opposite which he faced. Both the chief officer and the quartermaster agree that the time between the Alleghany's whistle

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and the collision was four minutes. All the Pomaron's crew agree that the Pomaron had very greatly diminished her speed. The captain of the Alleghany, who had come on deck, says that the Pomaron had not reversed until the vessels were near enough for him to shout to Westgarth to do so, at which time he put over his telegraph. At the time of the collision the vessels had changed their headings considerably. The only testimony upon this
250 point is given by Westgarth, who says that the Alleghany was headed southeast by south and the Pomaron east southeast, but that the angle of collision was four points. The bow of the Pomaron struck the starboard quarter of the Alleghany somewhere between hatches 3 and 4, not less than 100 feet from the stern. The latter was under full speed, and she went on past the Pomaron until her engines were reversed and she stopped. Being badly damaged, she put about for Norfolk, but was found to be in sinking condition a few hours afterwards and her passengers and crew were taken on the Pomaron, which then stood by until the Alleghany sunk, at about 3 o'clock.

Kneeland, Harison & Hewitt, Esqs., (Lawrence Kneeland), for Federal Insurance Co.

Harrington, Bigham & Englar, Esqs. (Howard S. Harrington), for Eugene J. F. Coleman, et al.

Convers & Kirlin, Esqs. (J. Parker Kirlin and Wm. H. McGrann), for the Yang-tsze Insurance Association and Nord-Deutsche Insurance Co.

Henry A. Wise, Esq., and A. S. Pratt, Esq., for United States of America.

Burlingham, Montgomery & Beecher, Esqs. (Charles C. Burlingham, R. Leech and B. W. Wells), for respondent.

HAND, *D. J.*:

The libellants charge three faults against the Pomaron: first, that the vessels are not shown to have been in risk of collision; second, that the Pomaron changed her course before the time mentioned in the Note to Article 21; third, that her maneuvres
251 in extremis directly brought her into collison. I have found the case extremely complicated in the facts, but I believe that a sufficiently painstaking analysis of the testimony admits of more certainty than at first appears to be possible. Most of my conclusions as to the distance and bearing of the vessels at different times can be proved by the use of a simple logarithmic table together with the theorem that the sides of a triangle are in proportion to the sides of the opposite angles, but I have not appended the details of the calculations, as they can be easily verified.

The first question to determine is whether the situation was one actually involving risk or collision. This the Rules define as one in which the bearing does not appreciably change. We know that the constant bearing which would have brought them into collision, was almost exactly 39¼ degrees, or 3½ points. However, the constancy of the bearing applies only at substantial distances; thus,

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when the vessels were a half-mile apart, the Alleghany might have opened one-half a point and yet when the Pomaron's stern crossed the Alleghany's course the Alleghany's bow would have been only 164 feet away, much too close a shave. At half a mile apart the Alleghany was in that event 1,995 feet from the point of crossing, and the Pomaron 1,156. If, on the other hand, the Alleghany had closed one-half a point at a distance of half a mile, the Alleghany's stern would clear the Pomaron's course when the latter's bow was only 170 feet away, also too close a shave. In that case the Alleghany would have been 1,566 feet from the intersection and the Pomaron 1,637 feet. Even if the Alleghany had opened a full point, still the Pomaron would have been justified in regarding the case as one involving risk of collision, for her stern would
252 have cleared the Alleghany, a course when the latter was only about 680 feet away; and that, in the case of two vessels of the length of these, and moving at their speeds is no more than enough leeway to allow for incorrect estimates of distance and speed. The distances in that case would be respectively 2,182 feet and 897 feet. As nearly as the vessels can be placed from the testimony it will appear that the Alleghany, after the Pomaron blew was at least as far away as the Pomaron from the intersection of their courses, and not more than 1,000 feet further. At that time, therefore, there was a risk of collision and there could not therefore have been appreciably more than half a point of variation in the bearing from that absolutely constant bearing which would have brought their bows in collision, and which must have existed up to that time. I therefore find that whether or not Westgarth's observation of "about" northeast was careful enough (it was actually N. E. ¾ N.), the bearing had been in fact substantially constant, that there was in fact risk of collision within the meaning of the Rule, and that he was justified in maneuvering on that assumption. It seems hardly worth while further to elaborate the reality of a danger which everybody who was present thought imminent and certain before the Pomaron backed, and which was at once realized.

The next fault alleged against the Pomaron is her initial porting when the vessels were about one mile apart. This everyone agrees was before the period had arrived under the Note to the Twenty-first Article, after which the Alleghany could not alone avoid collision. Under all the authorities it was a clear violation of the rule and imposes on the Pomaron the duty of showing that it
253 could not have contributed to the disaster. The facts are that the Pomaron blew once and ported slightly, that the Alleghany thereupon awoke, her chief officer ran out of the chart room, thought at a glance that it was too late to port, blew two blasts and hard-a-starboarded; that, when the Alleghany blew twice, Westgarth hard-a-ported and gave the order to reverse, and at the end of half a minute did get his engines in reverse till the collision. First, I have to find out how long a time elapsed between the two signals. Westgarth first put it in the log as three minutes, but later he, Hyslop and Hogg put it at one minute. He further said that the vessels had moved from one mile apart to one-half, during

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period he was under this initial helm. If the angle was 39¼ degrees, the distance covered by the Pomaron while the distance apart decreased from one mile to one-half was 1,400 feet, which she would cover in about one minute and a half. Again, consider that although Hyslop, who best knew, says that the helm was not steadied, the total change in direction was only one point. It is hardly possible that a vessel of the Pomaron's size should travel over ten lengths under any change of helm at all and make no more change than one point. The surest way to judge of this is, not to take the witness' estimate of time or distance, but to consider the situation: The Alleghany's chief officer heard the Pomaron's signal in the chart room and at once ran out; he was alarmed by it and its discovery of him off duty. We must assume that he used all possible haste and took no long time to determine what he would do; the occasion permitted no reflection. When he decided, he answered by two long blasts and put over his wheel. To suppose that this
254 took more than a minute appears to me extremely unlikely and unreasonable; to assume it took a full minute is indeed doubtful. That it should have seemed a long time to Westgarth and Hyslop is reasonable, while they were being forced to hold that most trying of positions, a holding-on ship's, while the giving-way ship continues on her course and speed closer and closer. Therefore I find the shorter estimate to be the correct one.

The question still remains whether the Pomaron can show that this initial porting could not have produced the collision. In order to know this we must ascertain what actually happened after the Alleghany blew and put over her helm hard-a-starboard. I think it must be conceded that the Alleghany's story is true that the helm was put hard over substantially at the same time as the whistle was blown; to suppose any real delay is impossible and no one suggests it. The speed was, if anything, increased, for the telegraph was twice put full speed ahead. Moreover, we know from Westgarth—and there is no reason to suspect it—that the Alleghany, when struck, had starboarded not more than three or three and a half points. Westgarth puts her at southeast by south. If so, her stern had not yet left her course and she had not at most travelled more than three lengths, or 930 feet in "advance." At her speed she would travel 1,165 feet in a minute, and we may safely say, even allowing for her diminution of speed from her helm that she could not have been travelling over a minute from the time her helm went over.

Now the result of this is necessarily entirely to discredit the estimate of time of Westgarth, Johnson and Hyslop, and rather to credit the captain of the Alleghany, who says that Westgarth
255 put his telegraph full speed astern only when within hail. That there could have been anything like four minutes between the Alleghany's whistle and the collision seems to me so demonstrably untrue that I have no trouble in disregarding the testimony. The result is absurd, unless we suppose that after blowing, the Alleghany kept her helm amidships for three minutes. Even if we suppose that the Alleghany changed her course more

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than Westgarth says it does not help matters, for if the Alleghany was running for four minutes under a hard-a-starboard helm, she would move 4,660 feet. To be sure her helm would check her speed, but if her speed only averaged 70 per cent. of 11.5 knots she would have travelled 3,260 feet; and she would have turned through eight points and have been on parallel courses with the Pomaron in an "advance" of four lengths or only 1,240 feet, or before she reached the Pomaron's course. Again we must remember that even if it took four minutes for the ships to come into collision the Pomaron was not over 2,000 feet away, and if the Alleghany was anything like 4,660 feet away at the time it was a simple thing for her to port under the Pomaron's stern as the Rule requires. We must suppose that she was at once near enough to make that maneuvre seem impossible and yet that the Pomaron was so near as to make starboarding in fact impossible. We must also remember that the collision happened not far from the intersection of the courses, as I shall show.

Now, it may be thought that this does violence to the testimony, but remember that there is some testimony to the contrary, and also that Westgarth's first time estimate of the original porting
256 was absurd. His own and Hyslop's estimate of four minutes I should not have the least compunction in disregarding, were it not for Johnson's corroboration said to be taken from the clock. As to that, moreover, I am encouraged to disregard it, because it is clearly only approximate, any way. The shock was "about" 11:24. I was reversed "five" minutes. It takes "four" minutes to stop—though the Pomaron was by no means stopped. "I might easily have been out half a minute or three-quarters, because I saw the hands at an angle" (one minute is quite within the possibilities). "Three" minutes is the unusual rule for stopping. "Four" minutes is about near it. All this does not indicate an exact observation and I don't believe that he ever made one. It may have been thought important for the Pomaron to get as much way off as possible, and the witnesses moreover were corroborated in their natural bias, by what to the men on deck must have seemed the interminable period during which the ships were in extremis.

Consider next the actual maneuvre of the Pomaron. She was under a hard-a-starboard helm for the first half minute—the time it took to get the engines reversed. She had, therefore, with unchecked speed, travelled over four hundred and fifty feet, or nearly two lengths; during that time, her way being on, she had already swung nearly two points to starboard, before the screw was reversed. Thereafter under a reverse she would continue to swing to starboard though more slowly than if the engines were still ahead. Mr. Kneeland has cited from Knight the case where the engines are reversed at the same time that the helm is put hard over; he did not observe that "If the ship has actually begun to swing in
257 obedience to a hard-over helm before the screw is reversed, she will in most cases continue to swing in the same way in spite of the screw, although much less rapidly than if the screw were not reversed." How was it possible for the Pomaron to

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swinging to starboard for three and a half minutes more and still gain nothing to starboard beyond the two points she had made before the screw was reversed, for we must remember that she was headed about east southeast when she collided. As I view the collision, therefore, it occurred very much sooner after the Alleghany blew than four minutes, probably not over one minute after that time, certainly not two.

Having fixed the time of the maneuvers we must next fix the position of the vessels at the time of collision. As I have shown: the Alleghany's stern was still on her original course and she was at an angle of not more than three or three and a half points from it. As the collision occurred about one hundred feet from the stern we can easily calculate that the place of collision was somewhere about sixty feet to the east of the Alleghany's course. We can also tell how far to the south of the Pomaron's course the collision occurred if we assume that the Pomaron's stern was still dragging along her course; it would be about one hundred and sixty-five feet. To assume that the Pomaron's stern had not left the course is to assume that in this respect the vessel would have acted as if all the change of heading had been produced by a hard-over helm. As to this, Knight says, "In this case," where a small angle of helm is used, "also, the stern is thrown off and for some time the body of the ship moves along a line to leeward of
258 the original course." When the helm is hard over we know that the "some time" is two or three lengths and until the vessel has changed more than three points. There are, as far as I have found, no results of experiments with helms slightly over, but I think it fair to assume from the results set out by Knight that in about three lengths and with a change of only one point, the stern would not have left the course.

Another consideration corroborates this conclusion as to the distance to the south of the Pomaron's course that the collision must have occurred. The Alleghany's bow must have been at least two lengths away from the point of intersection when the helm was put over, because the Pomaron must have been at least six hundred feet away herself and the situation was such that the Pomaron could still suppose the Alleghany could cross under her stern. If so, the stern of the Alleghany was three lengths away and could not have much more than passed that point when the collision occurred, because if so the ship would have turned more than three and one-half points, a turn she will make in not more than three lengths. If so, the collision was not much to the south of the Pomaron's course, which is just where it ought to be if the Pomaron's stern had not yet left her own course.

If we assume that the stern of the Pomaron remained upon her old course till collision, that she headed east southeast, that the stern of the Alleghany remained on her course, that she headed southeast by south and that she was struck one hundred feet forward of her stern we can exactly find how far her stern was from the intersection of the two courses; it was seventy-six feet. If we

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then assume that the Pomaron had not originally ported,
259 but had in extremis done precisely as she did do, we can find at what part her bow would have crossed the course of the Alleghany; it would have been one hundred and twenty-seven feet from the intersection of the courses. If we assume therefore that the Pomaron's bow would have reached the course at the moment of the collision a collision was inevitable, even with an allowance of fifty feet. However, this assumes that the Pomaron changed her heading, but not her course, and there may be a question of this. All we certainly know is that when so much change of heading occurs under a hard-over helm the stern does not leave the course. We cannot know whether under the slight helm for the first minute the Pomaron may not have changed the course or "drift" of the ship. All we can say is that if she did change it at all, it was less than the one point change in her heading, because a turning ship always heads in upon the course she is at any given moment following. However, a very small change in her course would fix the collision at a place where the Pomaron's bow would have swung clear, had there been no original porting. Thus if the angle of drift had been only five degrees with original course when the Pomaron hard-a-ported, nevertheless she need have travelled only about five hundred and fifty feet to place the Alleghany's stern beyond tthe sweep of the Pomaron's bow. Indeed if the change of course were only three degrees or one-quarter of a point she need only travel about nine hundred and ten feet, or during the first minute after the telegraph was set full speed astern. It is plain enough that a very slight variation in her drift caused by the first porting might have made the difference between collision and safety.

260 However, it may be said that this is unfair because the time at which the Pomaron's bow would have entered the course of the Alleghany's stern was earlier than the moment of collision and that therefore the Alleghany must be put back further on her course. It is true that the bow of the Pomaron had to travel about sixty-five feet to the east of the Alleghany's course to come into collision but even if the Pomaron was travelling then at only seven knots per minute, it would have taken her less than six seconds to do this during which time the Alleghany would move only about one hundred feet. Besides this we must remember that the course of the Pomaron's bow to the Alleghany's course after she ported was more nearly at right angles than if she had not ported which means that her bow took a little shorter time to reach the Alleghany's course than it would otherwise have done. This difference if the actual distance to the Alleghany's course was nine hundred and twelve feet, i. e., if it took one minute to reach it, is about fifty feet which very nearly equals the distance to the east of the Alleghany's course which the bow had to go to get into collision.

Now it must be apparent to any candid person that when the Pomaron has the burden of proof all such calculations are the merest of speculation. I have followed them out,—and an im-

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mense deal more,—with a quite disproportionate expense of time in the hopes of finding some adequate ground for exonerating the Pomaron, a result which my sense of justice very greatly impels me to accomplish. It seems to me most unjust to hold that this ship should bear this loss, but although I have tried in every way I could think of to prove that the initial porting could not
261 have contributed to the collision, my final conclusion is that absolutely no certainty whatever is possible and that the exact facts have forever disappeared in the fleeting situation which has left no permanent memorial. If a ship which violates a rule becomes the guarantor of such proof, she must usually suffer. I do not weigh for a moment Westgarth's testimony that the initial porting made no difference.

The last question is of the Pomaron's maneuvers in extremis. It seems to me reasonably clear that, had Westgarth starboarded, he would have cleared the Alleghany. Such a maneuvre, even after the initial porting, would have probably thrown his bow off to port far enough to clear, and although the sterns might have collided, it is not likely. Had he held his course till the Alleghany blew and and then hard-a-starboarded, this would have been more certain. However, it does not follow that he should be held at fault for a wrong choice in extremis. Knight, page 258, does not recommend the maneuvre unless collision is inevitable and then only because it presents the holding-on vessel's bow to the danger, a failure to do which hardly lies as a complaint in the mouths of these libellants. He recommends that a holding-on vessel in this position port and keep her speed, but adds that it is a situation for which no hard and fast rule is applicable. It seems to me to be well within the rule in extremis. It must be remembered that for each vessel to move off from the other, as actually happened, made the courses converge and decreased the seriousness of the resulting collision in proportion. To starboard was to insure that if any collision did occur, it would be at right angles or near it. After figuring it out, I may now conclude that a hard-a-starboarded helm would have saved the day, but Westgarth had no means for
262 such a calculation and was suddenly confronted with the very worst maneuvre which his adversary could execute. He did the thing usually best and I will not therefore hold him for not starboarding.

The next question is of the Pomaron's failure to keep her speed. In the first place I do not think this had much to do with the collision in any event. If it took the Pomaron half a minute to reverse her engines, there could have been very little chance for a very marked change of speed. We may, however, suppose that the Pomaron's speed was reduced to seven or eight knots an hour; this was an advantage, but played no great part. Was it a wrong maneuvre in any event? It appears to be well settled that a vessel which ports should keep her speed, if she means to get away altogether, Knight, page 256. This is true for two reasons, first because she turns in a much shorter compass when her movement is not contradicted by her screw and second, because she passes more

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quickly out of the course of the other vessel. Had Westgarth any opportunity to clear the Alleghany this would have been his best maneuvre, though it would not necessarily have been fair to charge him for failing in extremis to choose the best. If on the other hand he had no chance to escape at all, as he certainly had not under a port helm, he did what was best because he tried to lessen the shock of collision, and he kept his own boat afloat and at least improved the chances of the Alleghany. It is true that the angle of collision might have been less and the blow more glancing, but it is a question whether this would have made up for the greater speed. At least he could not have crossed her bows, which is what the maneuvre requires, and he was surely not to blame for refusing to expose his side.

263 The necessary conclusion is that the Pomaron must be held for Westgarth's original porting, under the rule in the Pennsylvania, 19 Wall., 125, and the Agra, L. R. 1 P. C., 501. The time had not yet come when he needed to act alone, and his action was not in extremis; it was to assist the other vessel to accomplish her duty. I have already said that the result seems to me extremely inequitable and I should be glad if the appellate court could find otherwise, but while the holding-on is charged with the burden of proof, I can see no alternative [illegible] s one which shows the necessity for the proposed ne[illegible] will not hold each ship in solido, but will apportion [illegible]ing to fault. Had that been open to me, I should [illegible]ributed a very small fraction of blame indeed to the Pomaro[illegible] As it is, under what I cannot help calling a very mechanical and arbitrary rule of law, I see no escape from assessing this ship with the full loss for a trifling violation of the rule, for it remains true, however we may regret the result, that only unfounded speculation can justify us in saying that the violation could not have produced the collision. The only evidence which we have is necessarily wholly approximate and inexact; we should not treat it as the foundation for mathematical calculations without making large allowances, more than fifty or one hundred feet. The whole problem seems to me to come down to this: whether I should loyally apply the harsh rules as I find them to the evidence, or should try to mitigate their injustice by an appearance of certainty in deduction from shifty and unrealiable data.

The libellants will take the usual decrees.

264 To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The libel of M. H. Silvera against Furness, Withy & Company, Limited, in a cause of collision, civil and maritime, alleges as follows:

First. Libellant was the owner of a certain cargo on board the steamer Alleghany on the occasion of a collision on February 2nd, 1912, between said steamer and the British steamer Pomaron, off the coast of Virginia, as a result of which collision said steamer Alleghany was sunk and, with her cargo, including that owned by libellant, became a total loss.

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Second. At all the times hereinafter mentioned the respondent Furness, Withy & Company, Limited, was and is a foreign corporation organized under the laws of the Kingdom of Great Britain and Ireland, was and now is the sole owner of the British steamer Pomaron. Said respondent has property, credits and effects within this District.

Third. On or about the first day of February, 1912, the German steamer Alleghany, with a general cargo on board, including a large quantity of cargo owned by the libellant, left the port of New York, bound for various ports in the West Indies. While proceeding on her voyage, and at about 11 A. M. on the morning of February 2nd, 1912, the Alleghany was run into by the British steamer Pomaron at a point about 90 miles east of Cape Henry, Virginia, as a result of which the Alleghany was sunk, and with her cargo, including that owned by libellant, became a total loss. Libellant alleges, upon information and belief, that prior to the collision the Alleghany was proceeding on a course of South 4° West, magnetic, and the Pomaron—which had left Hampton Roads, bound for European ports—was standing on a course of East by North ¼ North, magnetic. The weather was clear, and both vessels were proceeding at full speed, the Alleghany making about 12 or 13 knots per hour, the Pomaron about 9 knots per hour. When the Alleghany and the Pomaron were first called upon to navigate with reference to each other, they were on crossing courses, the Alleghany having the Pomaron on her own starboard hand. At this time the navigating officer of the Alleghany was in the chart room, working up his position from observations taken shortly before. There was no officer on the bridge, and no sufficient lookout was being maintained. On the other hand the chief officer of the Pomaron was in charge of the navigation of his vessel, and first made out the Alleghany several miles away at a bearing given in the log book of the Pomaron as northeast. The Alleghany and the Pomaron continued to approach each other until they were about a mile apart, at which time the officer in charge of the Pomaron observed that the Alleghany was continuing on her southerly course proceeding at a speed of between twelve and thirteen knots per hour, with no one on her bridge. In that situation the Pomaron blew a signal of one whistle and ported her helm, and although her whistle remained unanswered, and although it was apparent that the Alleghany was keeping her course and speed the Pomaron continued on at her full speed of about nine knots and under her port helm, until the distance between the steamers was reduced from one mile to a half mile. At this point the Alleghany blew a signal of two whistles, indicating that her helm was being starboarded and that she would continue ahead and across the bows of the Pomaron. Thereupon the engines of the Pomaron were reversed at full speed and her helm put hard-a-port and kept hard-a-port until the stern of the Pomaron came into collision with the starboard side of the Alleghany at a point abaft the engine room, doing such damage to the Alleghany that she shortly afterwards filled and sank, and, [illegible] her cargo, became a total loss.

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ND CLOSE IN CENTER

Fourth. Said collision and consequent damage were not caused or contributed to by any fault or negligence on the part of your libellant, but were caused by the negligence and fault of both the steamers Alleghany and Pomaron more especially in the following particulars, among others which will be pointed out upon the trial of this action, to wit:

On the Part of the Steamer "Alleghany."

1. In that a good lookout was not maintained;
2. In that she failed to give timely signals of her intention to continue across the bows of the Pomaron;
3. In that she failed to take proper measures to avoid collision after she saw or should have seen that the Pomaron was continuing her course to starboard in violation of the starboard-hand rule.

On the Part of the Steamer "Pomaron."

1. In that a good lookout was not maintained;
2. In that she failed to keep her course as well as her
267 speed as required by the starboard-hand rule;
3. In that, while she and the Alleghany were approaching each other on crossing courses, and when they were a mile apart, she negligently blew a signal of one whistle and ported her helm in reckless attempt to cross the bows of the Alleghany;
4. In thereafter continuing at full speed under a port helm until the distance between the vessels was decreased from one mile to a half mile while her one whistle signal remained unanswered, and while it was obvious that the Alleghany was continuing ahead without change of course or speed, with no one on her navigating bridge;
5. In failing seasonably to stop and reverse in order to avoid a collision;
6. In putting her helm to port instead of to starboard after the Alleghany blew her signal of two whistles when the vessels were half a mile apart.

Fifth. By reason of the premises libellant has sustained damages in the loss of cargo shipped by him as aforesaid amounting in the aggregate to the sum of — dollars no part of which has been paid, although duly demanded.

Sixth. Upon information and belief, the respondent, Furness, Withy & Company, Limited, is a foreign corporation and, as libellant is informed and believes, none of its officers or directors reside in this District. Said respondent, however, has, or during currency of process hereunder will have, certain property within this district.

268 Seventh. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore libellant prays that process may issue with clause of foreign attachment against the respondent, Furness, Withy & Company, Limited, citing it to appear and answer in the premises

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further commanding the Marshal of this District in case the said respondent cannot be found within this District, to attach its credits and effects to the amount sued for, and that a decree may be entered against the respondent in favor of the libellant for the amount of his damages aforesaid, with interest thereon, together with the costs and disbursements of this action, and that the Court may grant such further and other relief as the justice of the cause may require.

WALLACE, BUTLER & BROWN,
Proctors for Libellant.

54 Wall Street, New York City.

STATE OF NEW YORK,
County of New York, ss:

James K. Symmers, being duly sworn, deposes and says that he is a member of the firm of Wallace, Butler & Brown, proctors for the libellant herein; that he has read the foregoing libel and knows the contents thereof and that the same is true of his own knowl-
269 edge, except as to the matters therein stated upon information and belief and as to those matters he believes it to be true.

That the reason this vertification is not made by libellant is that libellant is not now within one hundred miles of New York City.

JAMES K. SYMMERS.

Sworn to before me this 22nd day of April, 1913.
[SEAL.] WILLIAM H. WILSON, JR.,
Notary Public, Kings County, No. 167.

Certificate filed in New York County, No. 69.
Kings County Register's No. 7042.
New York County Register's No. 5179.

The answer of Furness, Withy & Company, Limited, to the libel of M. H. Silvera, and the libels to recover damages for loss of cargo, filed by Wallace, Butler & Brown on behalf of Walter Oloffson, et al., and of Hazan & Co., against Furniss, Withy & Co. together with the answers of Furness, Withy & Co., Limited, thereto, are omitted from the printing of the transcript of record herein (see stipulation as to record on appeal).

ND CLOSE IN CENTER

270 At a Stated Term of the United States District Court for the Southern District of New York, Held at the Court Rooms Thereof, in the Post-office Building, Borough of Manhattan, City of New York, on the 12th Day of June, 1913.

Present: Hon. Learned Hand, United States District Judge.

YANG-TSZE INSURANCE ASSOCIATION, LIMITED, et al.
against
FURNESS, WITHY & COMPANY, LIMITED.

NORD-DEUTSCHE INSURANCE COMPANY et al.
against
FURNESS, WITHY & COMPANY, LIMITED.

FEDERAL INSURANCE COMPANY
against
FURNESS, WITHY & COMPANY, LIMITED.

WALTER OLOFFSON et al.
against
FURNESS, WITHY & COMPANY, LIMITED.

M. H. SILVERA
against
FURNESS, WITHY & COMPANY, LIMITED.

HAZAN & COMPANY
against
FURNESS, WITHY & COMPANY, LIMITED.

271 BOSTON INSURANCE COMPANY
against
FURNESS, WITHY & COMPANY, LIMITED.

WALTER D. DESPARD
against
FURNESS, WITHY & COMPANY, LIMITED.

EUGENE J. F. COLEMAN
against
FURNESS, WITHY & COMPANY, LIMITED.

MARSHALL K. WEIDENSAUL
against
FURNESS, WITHY & COMPANY, LIMITED.

FRANCES W. VAN PRAAG,
against
FURNESS, WITHY & COMPANY, LIMITED.

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ORTON G. ORR
against
FURNESS, WITHY & COMPANY, LIMITED.

LAURA MOORE
against
FURNESS, WITHY & COMPANY, LIMITED.

LOUIS BERTSCHMAN
against
FURNESS, WITHY & COMPANY, LIMITED.

UNITED STATES OF AMERICA
against
FURNESS, WITHY & COMPANY, LIMITED.

Final Decree.

272 The above-entitled suits having been brought on for trial simultaneously, and having been heard on the pleadings and proofs adduced by the respective parties, and having been argued by their respective advocates, and due deliberation having been had, and the Court having rendered a decision that the libellants are entitled to recover of the respondent by reason of the matters set forth in the libels, and the damages of the libellants having been fixed by mutual agreement, as appears by consent at the foot hereof, without prejudice to the right of the respondent to appeal herein from this decree, in the following sums:

Yang-tsze Insurance Association, Limited, et al	$18,224.99
Nord-Deutsche Insurance Company et al	13,148.48
Federal Insurance Company	22,204.62
Walter Oloffson et al	1,886.64
M. H. Silvera	1,975.18
Hazan & Company	1,152.73
Boston Insurance Company	9,017.39
Walter D. Despard	13,683.09
Eugene J. F. Coleman	5,234.23
Marshall K. Weidensaul	986.08
Frances W. Van Praag	983.58
Orton G. Orr	26,080.65
Laura Moore	11,040.84
Louis Bertschman	28,483.26
United States of America	4,582.01

with interest on the several amounts above set forth from February 2, 1912, and the costs of the libellants having been taxed in the following amounts:

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273	Yang-tsze Insurance Association, Limited, et al.....	$54.60
	Nord-Deutsche Insurance Company, et al	51.70
Federal Insurance Company		54.05
Walter Oloffson, et al.		2.40
M. H. Silvera		2.40
Hazan & Company.....		2.40
Boston Insurance Company.....		30.15
Walter D. Despard.....		53.30
Eugene J. F. Coleman.....		53.30
Marshall K. Weidensaul.....		53.30
Frances W. Van Praag.....		53.30
Orton G. Orr.....		83.75
Laura Moore.....		53.30
Louis Bertschman.....		53.30
United States of America.....		49.92

Now, on motion of Convers & Kirlin, proctors for the libellants, Yang-tsze Insurance Association, Limited, et al., and Nord-Deutsche Insurance Company, et al., it is hereby

Ordered that the above-entitled suits be and they hereby are consolidated; and on like motion, it is hereby ordered, adjudged and decreed:

1. That the libellant, Yang-tsze Insurance Association, Limited, et al., recover of the respondent, Furness, Withy & Company, Limited, the sum of $18,224.99, with interest thereon from February 2, 1912, in the sum of $1,458.00, together with $54.60 costs as taxed, amounting in all to the sum of $19,737.59, with interest thereon until paid.

274 2. That the libellant, Nord-Deutsche Insurance Company, et al., recover of the respondent, Furness, Withy & Company, Limited, the sum of $13,148.48, with interest thereon from February 2, 1912, in the sum of $1,051.88, together with $51.70 costs as taxed, amounting in all to the sum of $14,252.02, with interest thereon until paid.

3. That the libellant, Federal Insurance Company, et al., recover of the respondent, Furness, Withy & Company, Limited, the sum of $22,204.62, with interest thereon from February 2, 1912, in the sum of $1,776.37, together with $54.05 costs as taxed, amounting in all to the sum of $24,035.04, with interest thereon until paid.

4. That the libellants, Walter Oloffson, Robert Luacas and C. Lyon Paul, doing business as Oloffson, Luacas & Company, recover of the respondent, Furness, Withy & Company, Limited, the sum of $1,886.64, with interest thereon from February 2, 1912, in the sum of $150.93, together with $2.40 costs as taxed, amounting in all to the sum of $2,039.97, with interest thereon until paid.

5. That the libellant, M. H. Silvera, recover of the respondent, Furness, Withy & Company, Limited, the sum of $1,975.18, with interest thereon from February 2, 1912, in the sum of $158.01, together with $2.40 costs as taxed, amounting in all to the sum of $2,135.59, with interest thereon until paid.

6. That the libellant, Hazan & Company, recover of the re

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ent, Furness, Withy & Company, Limited, the sum of $1,152.73, with interest thereon from February 2, 1912, in the sum of
275 $92.22, together with $2.40 costs as taxed, amounting in all to the sum of $1,247.35, with interest thereon until paid.

7. That the libellant, Boston Insurance Company, recover of the respondent, Furness, Withy & Company, Limited, the sum of $9,017.39, with interest thereon from February 2, 1912, in the sum of $721.39, together with $30.15 costs as taxed, amounting in all to the sum of $9,768.93, with interest thereon until paid.

8. That the libellant, Walter D. Despard, recover of the respondent, Furness, Withy & Company, Limited, the sum of $13,683.09, with interest thereon from February 2, 1912, in the sum of $1,094.85, together with $53.30 costs as taxed, amounting in all to the sum of $14,831.24, with interest thereon until paid.

9. That the libellant, Eugene J. F. Coleman, recover of the respondent, Furness, Withy & Company, Limited, the sum of $5,234.23, with interest thereon from February 2, 1912, in the sum of $418.74, together with $53.30, costs as taxed, amounting in all to the sum of $5,706.27, with interest thereon until paid.

10. That the libellant, Marshall K. Weidensaul, recover of the respondent, Furness, Withy & Company, Limited, the sum of $986.08, with interest thereon from February 2, 1912, in the sum of $78.89, together with $53.30 costs as taxed, amounting in all to the sum of $1,118.27, with interest thereon until paid.

276 11. That the libellant, Frances W. Van Praag, recover of the respondent, Furness, Withy & Company, Limited, the sum of $983.58, with interest thereon from February 2, 1912, in the sum of $78.69, together with $53.30 costs as taxed, amounting in all to the sum of $1,115.57, with interest thereon until paid.

12. That the libellant, Orton G. Orr, recover of the respondent, Furness, Withy & Company, Limited, the sum of $26,080.65, with interest thereon from February 2, 1912, in the sum of $2,086.45, together with $83.75 costs as taxed, amounting in all to the sum of $28,250.85, with interest thereon until paid.

13. That the libellant, Laura Moore, recover of the respondent, Furness, Withy & Company, Limited, the sum of $11,040.84, with interest thereon from February 2, 1912, in the sum of $883.27, together with $53.30 costs as taxed, amounting in all to the sum of $11,977.41, with interest thereon until paid.

14. That the libellant, Louis Bertschman, recover of the respondent, Furness, Withy & Company, Limited, the sum of $28,483.26, with interest thereon from February 2, 1912, in the sum of $2,278.66, together with $53.30 costs as taxed, amounting in all to the sum of $30,815.22, with interest thereon until paid.

15. That the libellant, United States of America, recover of the respondent, Furness, Withy & Company, Limited, the sum of $4,582.01, with interest thereon from February 2, 1912, in the
277 sum of $366.56, together with $49.92 costs as taxed, amounting in all to the sum of $4,998.49, with interest thereon until paid. And it is further

ordered that unless this decree be satisfied or an appeal taken

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therefrom within ten days after service of a copy thereof, with notice of entry, on the respondent, or its proctors, the sureties on the respondent's stipulations for costs, and the sureties on the respondent's stipulation for value, cause the engagements of their stipulations to be performed, or show cause within four days, or on the first day of jurisdiction thereafter why execution should not issue against their goods, chattels and lands to satisfy this decree.

LEARNED HAND,
United States District Judge.

A. G., JR.

The damages of the several libellants above mentioned having been fixed by agreement as above set forth, we waive notice of settlement of the foregoing decree.

CONVERS & KIRLIN,
Proctors for Yang-tsze Insurance Association, Limited, et al., and Nord-Deutsche Insurance Company, et al.

KNEELAND, HARRISON & HEWITT,
Proctors for the Federal Insurance Company et al.

BARRY, WAINWRIGHT, THACHER & SYMMERS,
Proctors for Walter Oloffson, et al., M. H. Silvera and Hazan & Co.

278 WILLIAMS & STEVENSON,
Proctors for Boston Insurance Co.

HARRINGTON, BINGHAM & ENGLAR,
Proctors for Walter D. Despard, Eugene J. F. Coleman, Marshall K. Weidensaul, Frances W. Van Praag, Orton G. Orr, Laura Moore, and Louis Bertschman.

H. SNOWDEN MARSHALL,
Proctor for United States of America.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Furness, Withy & Company, Limited.

[Endorsed:] Final decree entered June 13, 1913.

279 United States District Court, Southern District of New York

Notice of Appeal.

YANG-TSZE INSURANCE ASSOCIATION, LIMITED, et al.,
against
FURNESS, WITHY & COMPANY, LIMITED.

NORD-DEUTSCHE INSURANCE COMPANY et al.
against
FURNESS, WITHY & COMPANY, LIMITED.

FEDERAL INSURANCE COMPANY
against
FURNESS, WITHY & COMPANY, LIMITED.

WALTER OLOFFSON et al.
against
FURNESS, WITHY & COMPANY, LIMITED.

M. H. SILVERA
against
FURNESS, WITHY & COMPANY, LIMITED.

HAZAN & COMPANY
against
FURNESS, WITHY & COMPANY, LIMITED.

BOSTON INSURANCE COMPANY
against
FURNESS, WITHY & COMPANY, LIMITED.

280 WALTER D. DESPARD
against
FURNESS, WITHY & COMPANY, LIMITED.

EUGENE J. F. COLEMAN
against
FURNESS, WITHY & COMPANY, LIMITED.

MARSHALL K. WEIDENSAUL
against
FURNESS, WITHY & COMPANY, LIMITED.

FRANCES W. VAN PRAAG
against
FURNESS, WITHY & COMPANY, LIMITED.

ORTON G. ORR
against
FURNESS, WITHY & COMPANY, LIMITED.

LAURA MOORE
against
FURNESS, WITHY & COMPANY, LIMITED.

LOUIS BERTSCHMAN
against
FURNESS, WITHY & COMPANY, LIMITED.

UNITED STATES OF AMERICA
against
FURNESS, WITHY & COMPANY, LIMITED.

SIRS: Take notice that the respondent, Furness, Withy &
281 Company, Limited, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, from the final decree

of this Court entered herein June 13, 1913, and from each and every part of said decree.

Dated, New York, June 18, 1913.

Yours, etc.,

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Respondent.

To Messrs, Convers & Kirlin, Proctors for Yang-tsze Insurance Association, Ltd., et al., and Nord-Deutsche Insurance Co., et al.; Messrs. Kneeland, Harison & Hewitt, Proctors for Federal Insurance Co., et al.; Messrs. Barry, Wainwright, Thacher & Symmers, Proctors for Walter Oloffson, et al., M. H. Silvera and Hazan & Co.; Messrs. Williams & Stevenson, Proctors for Boston Insurance Co.; Messrs. Harrington, Bigham & Englar, Proctors for Walter D. Despard, Eugene J. F. Coleman, Marshall K. Weidensaul, Frances W. Van Praag, Orton G. Orr, Laura Moore, and Louis Bertschman; H. Snowden Marshall, Esq., Proctor for United States of America.

[Endorsed:] Notice of Appeal, June 18, 1913.

282 *Assignments of Error.*

United States District Court, Southern District of New York.

YANG-TSZE INSURANCE ASSOCIATION, LTD., and Others, Libellants,
against
FURNESS, WITHY & COMPANY, LIMITED, Respondents, and 14 Other Suits.

The respondent, Furness, Withy & Company, Ltd., hereby assigns error in the decision and final decree of the United States District Court for the Southern District of New York as follows:

1. In that the Court did not hold that the collision between the Pomaron and Alleghany was due solely to the gross negligence of the Alleghany.

2. In that the Court held the Pomaron in fault for porting.

3. In that the Court held that a burden rested on the Pomaron to show that her porting did not contribute, and could not have contributed, to the collision.

4. In that the Court did not find that the situation was one of special circumstances under Article 27 of the International Rules.

283 5. In that the Court did not dismiss the libels as against the respondent, with costs.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Respondent.

[Endorsed:] Assignments of error filed October 2, 1913.

284 United States District Court, Southern District of New York.

YANG-TSZE INSURANCE ASSOCIATION, LIMITED, et als., Libellants,
against
FURNESS, WITHY & COMPANY, LIMITED, Respondent, and Other Cases.

It is hereby stipulated that only one of the several libels filed by each proctor and the answer thereto need be printed in the transcript of record herein; but that the libels and answers thus omitted be considered as set forth with the same force and effect as if printed herein.

It is further stipulated and agreed that the Yang-tsze Exhibits Nos. 1 to 9, Nord-Deutsche Nos. 1 to 7, and Federal Nos. 1 to 12, being bills of lading, invoices and assignments, Exhibit 14 being a blue print, and Pomaron's Exhibits Nos. 2 to 6, being photographs of the steamship Pomaron, be omitted from the printing of the record herein, but may be submitted to the Court on the hearing of this appeal.

It is further stipulated that the foregoing is a true transcript of the record of the said District Court.

Dated, New York, November 21, 1913.

CONVERS, & KIRLIN,
Proctors for Yang-tsze Insurance Association, et al.

285 BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for SS. Pomaron.

HARRINGTON, BIGHAM & ENGLAR,
Proctors for Walter D. Despard et al.

KNEELAND, HARISON & HEWITT,
Proctors for Federal Ins. Co. et al.

WILLIAMS & STEVENS,
Proctors for Boston Ins. Co.

BARRY, WAINWRIGHT, THACHER & SYMMERS,
Proctors for M. H. Silvera et al.

H. SNOWDEN MARSHALL, ESQ.,
Proctor for the United States of America.

286 United States District Court, Southern District of New York.

YANG-TSZE INSURANCE ASSOCIATION, LIMITED, et al., Libellants-Appellees,
against
FURNESS, WITHY & COMPANY, LIMITED, Respondent-Appellant, and 14 Other Cases Against Same, Respondent.

I, Alexander Gilchrist, Jr., Clerk of the United States District Court of the United States of America, for the Southern District of New York, do hereby certify that the foregoing is a true transcript

of the record of the District Court of the United States in the above entitled cause, as agreed on by the parties.

In testimony whereof, I have caused the seal of said Court to be affixed, at the City of New York, this — day of October, in the year of our Lord one thousand nine hundred and thirteen, and of the Independence of the United States the one hundred and thirty-seventh.

ALEXANDER GILCHRIST, JR., *Clerk.*

287 United States Circuit Court of Appeals for the Second Circuit, October Term, 1913.

No. 201.

Argued March 20, 1914; Decided June 10, 1914.

THE YANG-TSZE INSURANCE ASSOCIATION et al., Libellants-Appellees,

vs.

FURNESS, WITHY & COMPANY, LTD., Respondent-Appellant (and Fourteen Other Cases).

Appeal from the District Court of the United States for the Southern District of New York.

Before Lacombe, Ward and Rogers, Circuit Judges.

Burlingham, Montgomery and Beecher, Proctors for Appellant; Charles C. Burlingham, Norman B. Beecher, Robinson Leech, Counsel; Convers and Kirlin, Proctors for Appellees; J. Parker Kirlin, William H. McGrann, Advocates. Harrington, Bingham & Englar, Proctors for Libellants-Appellees; Eugene J. Coleman, et al., Howard S. Harrington, Advocate. Lawrence Kneeland, Counsel for Appellee; Kneeland, Harrison and Hewitt, Proctors.

This cause comes here upon appeal to review a decree of the District Court of the United States for the Southern District of New York in favor of certain owners and underwriters of cargo of the German Steamship Alleghany for damages resulting from the total loss of the cargo as the result of a collision with the Pomaron on February 2, 1912.

288 The original libels were filed against the owners of the two vessels jointly. But the Hamburg-American Company, the owner of the Alleghany, filed a petition for the limitation of its liability and surrendered the amount of its pending freight for the voyage and the libels were thereupon stayed as to that company.

ROGERS, *Circuit Judge:*

Furness, Withy & Company, Ltd., a corporation created by and existing under the laws of the United Kingdom of Great Britain

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and Ireland prosecutes this appeal to reverse a decree of the court below. Fifteen separate libels were filed against the above named corporation. The separate libellants were: Yang-Tsze Insurance Association, Ltd., et al., Nord-Deutsche Insurance Company, et al., Federal Insurance Company; Walter Oloffson, et al., M. H. Silvera; Hazen and Company; Boston Insurance Company; Walter Despard; Eugene J. F. Coleman; Marshall K. Weidensaul; Frances W. Van Praag; Orton G. Orr; Laura Moore; Louis Bertschman; United States of America. The various libellants brought suits for cargo losses except the United States. The Government suit was for loss of registered mail carried by the Steamship Alleghany which sank at sea because of a collision with the Steamship Pomaron and the suits were brought against the owners of the latter vessel. The suits were brought on for trial simultaneously having been consolidated and heard on the pleadings and proofs. The court below rendered a decision that the libellants were entitled to recover. One decree was entered awarding in all, damages and costs amounting to $172,029.81.

This collision occurred off the capes of Virginia about 11.30 A. M. on February 2, 1912. The Alleghany was on a voyage from New York to the West Indies. The vessel was an ordinary tramp steamer, 310 feet long. The Pomaron was a steel screw steamship of 1,809 tons gross and 1,027 tons net, 278 feet long and belonged to Furness, Withy & Co., Limited. She was on her way from Baltimore to European ports and loaded with grain and general cargo. The Pomaron sighted the Alleghany about an hour before the accident, the latter being some ten or twelve miles away and on her port hand. Each vessel kept her course and speed for some forty-five min-
289 utes. During this time the chief officer of the Pomaron had the Alleghany under constant observation. But all this time the Alleghany had not seen the Pomaron at all. This was occasioned by the fact that her chief officer, then on watch, had taken his observation and gone into the chart room to calculate his position. The Alleghany did not discover the Pomaron until the latter blew one blast on her whistle and ported her helm. This was between five and seven minutes of the collision. Between the time when the Pomaron saw the Alleghany and the time when she blew the blast on her whistle the two vessels had continued to approach each other without change of course or speed. At the time the Pomaron sounded the whistle the two vessels were about a mile apart and the Alleghany was proceeding at a speed of 11½ knots per hour and the Pomaron at a speed of 9 knots. After the Pomaron sounded the whistle the Alleghany shortly blew two blasts and thereupon the chief officer of the Pomaron at once rang the engines full speed astern and ordered the helm hard-a-port. He testified that after he had run full speed astern he saw the Alleghany had put her helm hard-a-starboard and he could see "she was swinging around, her stern was flying into us and of course, when he put his helm hard-a-starboard, his stern swung around and caught us on the bow, about abreast of No. 3 hatch." The bow of the Pomaron struck the starboard quarter of the Alleghany about 100 feet from

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her stern and about 3 o'clock in the afternoon the Alleghany sank. Before the collision the Alleghany was on a course approximately south and the Pomaron on a course approximately east, the vessels being on crossing courses and the Alleghany having the Pomaron on her starboard hand. As the two vessels were on crossing courses they were subject to Article 19 of the International Regulations. That article is as follows:

"When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her starboard side shall keep out of the way of the other."

And Article 21 provides:

"Where, by any use of these rules, one of two vessels is to keep out of the way, the other shall keep her course and speed."

290 The Pomaron was to the southward and westward of the Alleghany and on the latter's starboard hand as the two vessels approached each other. These respective courses had been maintained for several hours prior to the collision and the two vessels were about a mile apart when the Pomaron, the privileged vessel, changed her course to starboard. In doing so she failed to comply with Article 21. The Pomaron seeks to excuse its porting under Article 27. That Article is as follows:

"In obeying and construing these rules due regard shall be had to all dangers of navigation and collision and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger."

It becomes necessary, therefore, to inquire whether the special circumstances as they existed at the time the Pomaron altered her course was justified under Article 27.

The application of rule 27 is restricted by its terms to situations of immediate danger. That rule applies only to exceptional cases. As said by the Supreme Court in The Oregon, 158 U. S., 186, 202, exceptions to the rules are to be admitted "with great caution and only when imperatively required by special circumstances of the case. It follows that, under all ordinary circumstances, a vessel discharges her full duty and obligation to another by a faithful and literal observance of these rules." In Marsden's Collisions at Sea, 6th Ed., p. 455 it is said:

"But Article 27 applies only to cases where 'there is immediate danger, perfectly clear;' and the departure from the rules must be no more than is necessary."

The 'special circumstances' apparently relied upon to excuse the Pomaron under Article 27 is the testimony of the officer in charge of the vessel that he could see no one on the bridge of the Alleghany. And attention is called to the doctrine of the Supreme Court in The Delaware, 161 U. S., 459, where it is said:

"The weight of English, and perhaps of American authorities is to the effect that if the master of the preferred steamer

291 has any reason to believe that the other will not take measures to keep out of her way, he must treat this as a 'special circumstance' under Rule 24 (now Rule 27), 'rendering a departure from the rules 'necessary to avoid immediate danger.'"

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And the officer in charge of the Pomaron insisted that the change in the Pomaron's course did not cause the collision. His testimony was as follows:

"Q. What was the danger?

A. I saw if he was going to keep on the was he was doing he would catch us somewhere about the engine room.

Q. If you had maintained your course he would have struck you near the engine room?

A. Yes, about midships.

Q. If you had both maintained the courses you were on then without change, what do you think would have happened?

A. He would have run into us amidships.

Q. Are you sure of that?

A. Yes.

Q. Wouldn't he have got across your bow?

A. No, sir; he couldn't have done it.

Q. Could you have possibly got across his bow?

A. No."

And on cross-examination he was asked "do you think collision would have happened if you had not ported your helm? A. Yes, it would have happened in any case; she would have caught us somewhere probably about amidships if I had not ported."

But there can be no doubt that it was the duty of the Pomaron to have kept on her course until a departure was necessary to avoid immediate danger. At the time she ported her helm she was a mile away from the Alleghany and the circumstances had not yet developed which justified any departure from the established rules. Her chief officer was asked: "In order to get the matter quite plain on the record, will you tell us when it was that in your judgment the circumstances had developed so that collision became unavoidable unless you did something." To which he replied: "Really not until the Alleghany had given me two blasts on the whistle." At
292 that time the two vessels were, according to his testimony, half a mile away from each other. He testified that up to that time he had appreciated risk of collision but though it might have been avoided by the other vessel. He was then asked: "Then it became under the rule your duty to do something." And he answered, "Yes." "It had not been your duty to do anything before that?" To which he replied, "No, sir." It is established, therefore, upon the testimony of the chief officer of the Pomaron that he departed from the rule before it was necessary for him to do something to avoid an otherwise unavoidable collision.

We are obliged, therefore, to hold that the Pomaron not only violated Article 21 but that in doing so was not excused under Article 27. Concluding then, as we have, that the Pomaron was in fault, it remains to inquire whether the fault contributed to the collision. For if the fault had nothing to do with the collision it may be disregarded. The law unquestionably is that in cases of collision liability for damages rests upon the ship or ships whose fault occasioned the injury. And in considering whether this fault of the Pomaron contributed to the collision it is necessary to keep

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in mind the rule laid down by the Supreme Court in The Pennsylvania, 19 Wallace 125, 136 (1893) where the court said:

"But, when as in this case, a ship at the time of the collision is in actual violation of a statutory rule intended to prevent collisions, it is no more than a reasonable presumption that the fault, if not the sole cause, was a contributory cause of the disaster. In such a case the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been. Such a rule is necessary to enforce obedience to the mandate of the Statute."

The principle thus laid down that when a ship at the time of the collision is acting in violation of a statutory rule that burden is on her to show not merely that her fault might not have been one of the causes, or that it probably was not but that it could not have been one of the causes of the collision has been reaffirmed in subsequent cases and is the law beyond all controversy. Richelieu Navigation Company, 136 U. S., 408, 422, 423 (1890); Belden vs. Chase, 150 U. S., 674, 699 (1893).

293 And the same rule is established in the English Courts. The Agra, L. R., 1 P. C., 501, 504, 505. The Elizabeth Jenkins, L. R., 1 P. C., App., 501. Under these decisions the burden of proof rests upon the Pomaron to show that the fault she committed could not have been one of the causes of the collision.

But whether the collision would or would not have occurred if the Pomaron had held her course and speed cannot now possibly be determined because of the doubt which exists as to the exact bearing of the Alleghany from the Pomaron at the time. The bearing entered in the Pomaron's log is "about northeast" but both her chief officer and her wheelsman have testified that this is not correct, and that the bearing was between four and five points, nearer five than four. But the officer of the Pomaron for some inconceivable reason contented himself after his discovery of the Alleghany with one hasty sight over the compass to ascertain whether or not the bearing of the Alleghany was changing. He admitted that he watched the bearing of the Alleghany "just roughly" and that he didn't bother to take any bearings at all" and that the Alleghany's bearing might have been more or it might have been less than three points if he "had taken a correct bearing." He is not to be excused for his failure to take correct bearings and should have taken several correct bearings during the forty-six minutes which elapsed from first sighting the Alleghany to the collision, or during the thirty-nine minutes from first sighting her to his change of course. Asked as to whether he took the bearing by the compass, he replied: "It was not a proper compass bearing; I just glanced over the top of the compass and took a rough bearing." Then he was asked: "It was not a guess, you looked at the compass?" To this he answered: "It was not a true bearing, not an accurate bearing." He also testified that at that time the Alleghany was bearing northeast and was three points or more on his port bow. The Alleghany remained on her original course until just before the collision. Whether she changed just before the collision is not free from

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doubt. The officer of the Alleghany who was on watch at the time says that "no commands were given to the steersman of the Alleghany," although the chief officer of the Pomaron states that the Alleghany swung under a starboard helm. If the Alleghany did
bear northeast and was three points on the Pomaron's port
294 bow when the latter changed course it is a demonstrable proposition that a collision would not have occurred if both vessels had continued on as they were, neither one changing her course. It can readily be ascertained by applying the speed ratios whether the intersections of the known courses would be coincident, whether or not the two vessels would come together. If the Alleghany was three points on the Pomaron's port bow and had not changed her speed or course she would have passed the point where the two courses intersected safely and some seconds before the Alleghany reached it. And if as some of the testimony indicated the Alleghany was five points on the Pomaron's port bow the Alleghany would have passed the point of intersection about two minutes before the Pomaron reached it. But in reality the contradictions in the testimony as to what the actual bearing of the vessels was makes it impossible to demonstrate whether or not any change at all in the Pomaron's course or speed was necessary to avoid collision. We have already cited the opinion of the chief officer of the Pomaron that the collision would have happened if neither vessel had not changed. But we cannot accept his testimony on the point as conclusive. He estimated that the Alleghany was making thirteen knots and this according to his report to the Board of Trade was a knot and a half more than she was making. This would make a difference of 750 feet in the Alleghany's position in the five minutes which elapsed between the first porting and the collision.

The loss of property for which a recovery is sought was due to a collision on the high seas, in broad day light and in clear weather and with no other vessels about to embarrass or interfere with navigation. The two vessels involved were steamers and, therefore, could be manœuvered more easily than any other kind of vessels. They were in plain sight of each other when miles apart. They nevertheless came into collision and with such force that one of them sank in a few hours carrying down with her the entire cargo. It is difficult to see how it all happened unless both vessels were in fault and failed to exercise reasonable care. Plain common sense constrains one to such a conclusion. To exonerate either of them under such conditions can be justified only if upon the closest scrutiny of the navigation of each vessel it can be discovered that one of them
was free from all culpable blame. We have examined the
295 evidence in the case with care and we have not been satisfied that either one of these vessels was free from fault. The vessels that navigate the high seas and indeed vessels that navigate inland waters, entrusted with human lives and property of great value, must be held to the strictest standards of conduct and when they fail to observe the requirements which the maritime law of the nations has prescribed are to understand that they must abide the consequences.

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That the negligence of the Alleghany was inexcusable and even unparalleled, seemed to be admitted. The vessel was under the command of one of the best officers the Hamburg line had in its service. But he had no idea that there was any vessel anywhere in his vicinity. And for three quarters of an hour prior to the collision there was no lookout. The owners of that vessel filed a petition for limitation of liability and surrendered the amount of the freight for the voyage.

The court below assessed the Pomaron with the full loss while stating that the case was one "which shows the necessity for the proposed new rule which will not hold each ship in solido but will apportion liability according to fault." And it was urged upon us in argument that the court erred in not apportioning the damages in accordance with the degree of fault. Attention was called to the fact that the Alleghany was a German vessel and that her cargo, for the loss of which the suit was brought was shipped under bills of lading isued by the Hamburg-American Line, a corporation organized under the laws of the German Empire. And as the Pomaron was a British vessel it is said that it was the duty of the court to have taken judicial notice of the fact that by the Maritime Conventions Act (1 and 2 Geo. V. C. 57) the English rule as to division of loss by collision due to mutual fault was modified in accordance with the convention signed at the Brussels Conference in 1910. In like manner it is said that judicial notice should have been taken of §735 of the Commercial Code of Germany of May 10, 1897, which reads as follows:

"If the collision is caused by faults of both sides, then the liability for damages, as well as the amount of the damages to be paid,
296 depends on the circumstances, especially to what extent the collision has been caused by the prevailing fault of the members of one or the other crew."

It may be that at the time when this collision occurred the laws of Great Britain and Germany coincided in providing that the liability for damages is to be in proportion to the degree in which each vessel is in fault. If the foreign law had been pleaded and proved, and the court had assessed the damages in accordance with it, there would have been some authority for so doing. That course was adopted by the Circuit Court of Appeals in The Eagle Point, 142 Fed. 453 (1906). But in the case at bar there is nothing in the record to show the law of Germany or of Great Britain and the court was not at liberty to take judicial notice of it. The Federal Courts do not take judicial notice of the laws of a foreign nation designed only for the direction of its own affairs. But it has been held that in a certain class of cases a court of admiralty has the right to take judicial notice of the law promulgated by a foreign state if it relates to general maritime law. See Talbot vs. Seaman, 1 Cranchl. 38; The Scotia, 14 Wall. 170; The Belgenland, 114 U. S., 355, 370; The New York, 175 U. S., 187. In the Talbot case the right to take judicial notice was asserted of a foreign law but the law was one which had been promulgated in the United States as the law of France by the joint act of that Department [illegible]

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intrusted with foreign intercourse, and of that which is invested with the powers of war. And the decision seems to have been based on the fact that it had been so promulgated. In the Scotia case the court held that judicial notice might be taken of the original Rules and Regulations, which had been adopted by the British orders in Council in 1863 and by Congress in 1864 and by more than thirty of the principal commercial states of the world and that they might be treated as laws of the sea and of general obligation. And in the Belgenland case the court said these Rules and Regulations having been, for more than twenty years, adopted by all the principal maritime [illegible] of the world they would be presumed to be binding upon foreign as well as domestic ships unless the contrary was made to appear. And in the New York case the court stated it knew of no reason why the rule adopted in the Scotia case should not be applied to the Revised International Rules and Regu-
297 lations. But we do not find in any of these cases that the court has laid down the rule that it is the duty or the right of the court of admiralty to take judicial notice of local changes made in the general admiralty law of any foreign nation. On the contrary it satisfactorily appears that no such right is recognized. In the Belgenland case the court considered the question as to the law to be applied in cases of collision on the high seas between ships of different nationalities and said: "there can be no doubt that it must be the general maritime law, as understood and administered in the courts of the country in which the litigation is prosecuted." It added that this rule had some qualifications and among such qualifications stated "that if the maritime law, as administered by both nations to which the respective ships belong, be the same in both in respect to any matters of liability or obligation, such law, if shown to the court, should be followed in that matter in respect to which they agree, though it differ from the maritime law as understood in the country of the forum; for as respects the parties concerned, it is the maritime law which they mutually acknowledge." In Liverpool Steam Company vs. Phenix Insurance Company, 129 U. S., 397, 444, 445 (1889) an admiralty case, the court below was asked to take judicial notice of a British Statute exempting from liability for losses occasioned by the negligence of the servants of the steamship company. The court refused to do so and the Supreme Court sustained it in so doing and said:

"The law of Great Britain since the Declaration of Independence is the law of a foreign country and like any other foreign law, is matter of fact, which the courts of this country cannot be presumed to be acquainted with or to have judicial knowledge of, unless it is pleaded and proved.

The rule that the courts of one country cannot take cognizance of the law of another without plea and proof has been constantly maintained, at law and in equity, in England and America. * * *

The rule is as well established in courts of admiralty as in courts of common law or courts of equity."

And in the case of the Scotland, 105 U. S., 24, 29 (1881) Mr. Justice Bradley said:

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298 "If a collision should occur in British waters, at least between British ships and the injured party should seek relief in our courts, we would administer justice according to the British law, so far as the rights and liabilities of the parties were concerned, provided it were shown what that law was. If not shown, we would apply our own law to the case."

The Supreme Court, as these extracts from its opinions show, does not recognize any duty in the Admiralty Court to ascertain and apply the foreign law in fixing the liability of foreign vessels responsible for a collision where the foreign State has by statute changed the rule of the general maritime law. Such statutory limitation must be "shown" to the court and not taken judicial notice of and it must be "shown" as any other fact is shown, by proper evidence. As the foreign law was not pleaded and no evidence of it was introduced the court had no alternative but to follow the rule of the forum.

We do not wish, however, to be understood as intimating in what we have said that even if the foreign law had been pleaded the court could have assessed the damages according to the principle adopted by statute in Great Britain and in Germany. Whether it could or could not have done so is not now before us. And we do not find it necessary under the facts disclosed in the present record to consider how the decision of the Supreme Court in The Oceanic Steam Navigation Company, Limited vs. Mellor, announced May 25th, 1914, and not yet reported, affects the question.

Decree affirmed.

299 At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, Held at the Court-rooms in the Post Office Building in the City of New York, on the 20th Day of June, One Thousand Nine Hundred and Fourteen.

Present: Hon. E. Henry Lacombe, Hon. Henry G. Ward, Hon. Henry Wade Rogers, Circuit Judges.

YANG-TSZE INSURANCE ASSOCIATION et al., Libellants-Appellees,
vs.
FURNESS, WITHY & COMPANY, LTD., Respondent-Appellant.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed with interest and costs.

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It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

300 (Endorsed:) United States Circuit Court of Appeals, Second Circuit. Yang-Tsze Ins. Co. vs. Furness, Withy & Co. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed June 23, 1914. William Parkin, Clerk.

301 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 300, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Yang-Tsze Insurance Association, et al., against Furness, Withy & Co., Ltd., as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 15th day of September, in the year of our Lord One Thousand Nine Hundred and Fifteen, and of the Independence of the said United States the One Hundred and Fortieth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled 9/15/15.]

[Seal of the Supreme Court of the United States.]

302 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which Furness, Withy and Company, Limited, is Appellant, and Yang-Tsze Insurance Association, Limited, et al, are Appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do
303 hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

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Witness the Honorable Edward D. White, Chief Justice of the United States, the sixteenth day of June, in the year of our Lord One Thousand Nine Hundred and Fifteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

304 [Endorsed:] File no. 24,665. Supreme Court of the United States, October Term, 1914. No. 921. Furness, Withy & Co., Limited, vs. Yang-Tsze Insurance Association, Limited, et al. Writ of Certiorari. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 28, 1915. William Parkin, Clerk.

305 [Endorsed:] File No. 24,665. Supreme Court U. S. October term, 1915. Term No. 428. Furness, Withy & Company, Limited, Petitioner, vs. Yang-Tsze Insurance Association, Limited, et al. Writ of certiorari and return. Filed September 17, 1915.

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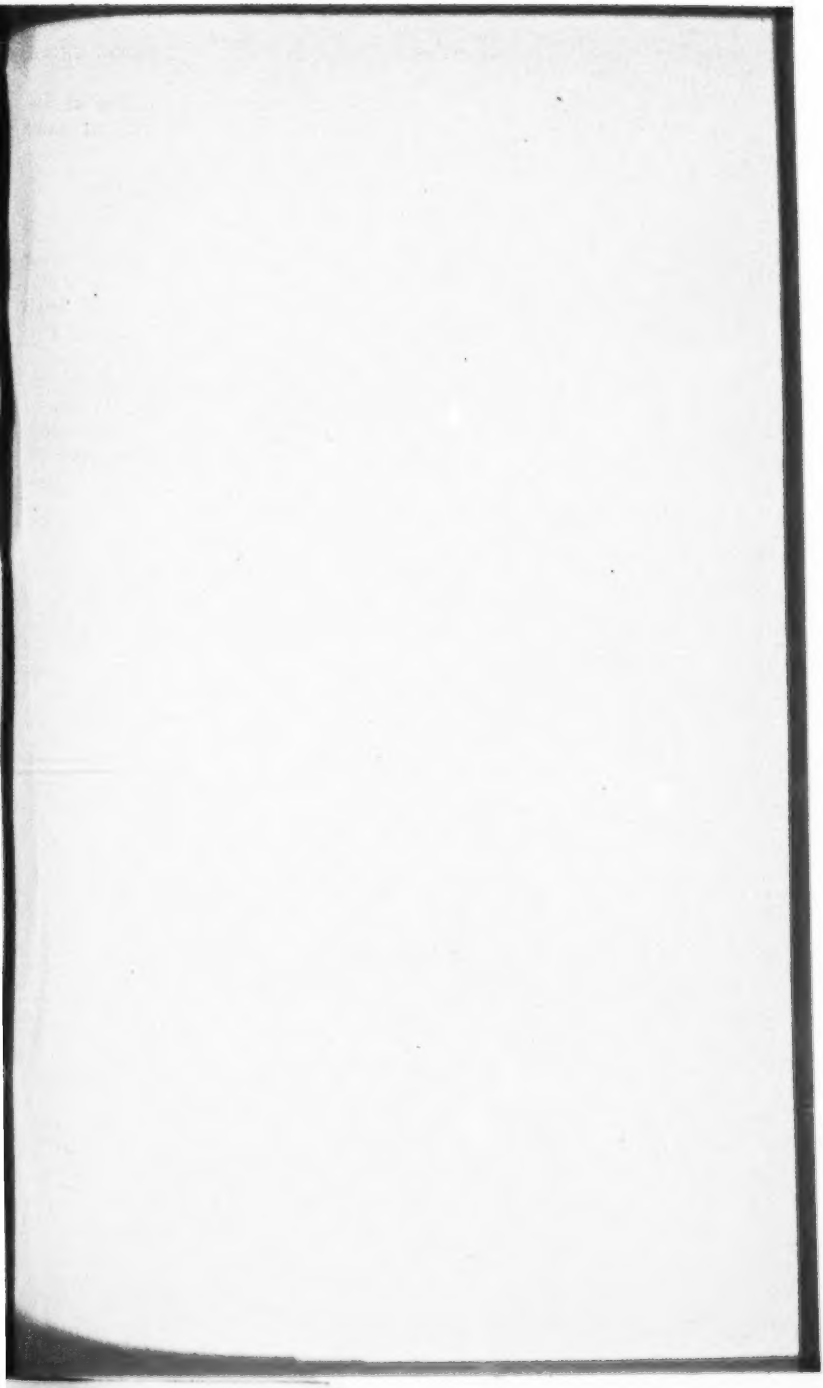

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